Hogan Lovells

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UK - Recent Cases

NOTIFICATION OF CHANGE IN CIRCUMSTANCES NOT MADE TO BROKER

The claimant sought damages from the defendant insurance brokers following the theft of a suitcase of valuable jewellery. Insurers had refused to pay the insurance claim because the policy only covered the jewellery for 14 days whilst in the personal possession of the claimant. The jewellery had been out of its safe deposit box for 23 days when the theft took place. The claimant brought a claim against his broker on the grounds that he had told the broker (by fax and letter) he would be holding the jewellery for an extended period of time. The broker did not notify the insurer of such. The court determined by way of preliminary issue that the claimant had not sent the letter or fax. The claimant did not have the agreement of his insurers to extend the 14 day time limit and the action was dimissed.

Shaul Yechiel v Kerry London Limited
Queen's Bench Division (Commercial Court)
Jonathan Hirst QC
12 February 2010

IMMEDIATE NOTICE REQUIREMENT: OBJECTIVE, NOT SUBJECTIVE, TEST

Cracks in the claimants' shop developed during the course of 2003; deteriorating significantly by November 2003. The claimant claimed under its insurance policy for losses arising from damage and business interruption caused by subsidence affecting the shop. The court held that the claimant had failed to give timely notice of the claim. A condition in the policy, requiring the insured to give "immediate" notice of "the happening of any [...] damage in consequence of which a claim is or may be made under this Policy", was an objective and not a subjective test. Notification was given too late and therefore the court upheld the defendant's denial of the claim on this basis.

Loyaltrend Limited and Sye Razvi v Brit UW Limited and others
London Mercantile Court, Queen's Bench Division
Mackie QC
12 February 2010

NATIONAL LEGISLATION TO BE INTERPRETED IN MANNER CONSISTENT WITH EUROPEAN LAW

A UK national was injured in a road traffic accident in Spain involving an uninsured Spanish resident. He claimed that he was entitled to compensation from the defendant in accordance with English law, pursuant to Regulation 13 of the Motor Vehicles (Compulsory Insurance) (Information Centre and Compensation body) Regulations 2003 (the "Regulations"). The defendant submitted that the applicable law was Spanish law, pursuant to Article 4(1) of the Rome II Directive (864/2007). The importance of the distinction was that the damages payable under Spanish law were likely to be lower than under English law. The judge stated that the court is obliged to interpret national legislation in a manner which is consistent with and gives effect to rules of European law. To the extent that the Regulations and Rome II are inconsistent, the latter must prevail. It was held that Rome II did apply to the case and that, since the damage occurred in Spain, the compensation payable by the defendant to the claimant should be assessed in accordance with Spanish law.

Jacobs v Motor Insurers Bureau
Queen's Bench Division
Owen T
16 February 2010

INTERPRETATION OF ACTUAL TOTAL LOSS UNDER THE MARINE INSURANCE ACT 1906

Masefield owned cargo which was captured by pirates but ultimately released for a small ransom. The defendant insurers refused to cover what Masefield claimed was an "actual total loss" on the grounds that it had been irretrievably deprived of its goods. The insurers were entitled to deny cover as although the test for actual total loss was an objective one, the court was entitled to take into account the facts and circumstances of the case when assessing whether there was an actual total loss and it was clear in this case that all parties expected the cargo to be recovered. For the insured to establish irretrievable deprivation, it had to show that recovery of cargo was impossible.

Masefield AG v Amlin Corporate Member Ltd
Commercial Court, Queen's Bench Division
Steel J
18 February 2010

Continued...

CLAIMS CONTROL CLAUSE RESTRICTION APPLIES TO INSURED'S OWN CLAIM

The insured was a sofa retailer which faced claims from customers suffering an allergic reaction to sofas which were supplied to the insured by a third party. The insured's liability policy contained a claims control clause with a prohibition on the insured settling underlying claims without insurer's prior written consent. In a situation where the insured had agreed to forgo its rights to sue the third party supplier of sofas, the court found that the insured had breached the claims control clause's prohibition which, on its proper construction, applied not only to claims against the insured by injured customers but also to the insured's own claim against the third party supplier.

Horwood v Land of Leather Ltd
Commercial Court, Queen's Bench Division
Teare, J
18 March 2010

DOUBLE INSURANCE?

Insurers provided buildings cover to property owners under a policy extending to anyone buying the property until the sale was completed. There was an agreement to sell the property and buyers took out a policy of insurance prior to completion. The new policy said if/when the buyers claimed, there was other insurance covering the same damage, the new insurer would only cover its share. Between exchange and completion the property was severely damaged by fire. The court held the insurance taken out by the owners did not extend to the buyers; it stipulated that there would be no indemnity if there was other insurance covering the same risk. The new policy did not exclude cover in the event the buyers were otherwise insured so this was the only policy in place at the time of the fire. There was no double insurance. The buyers' insurers were solely responsible for settling the claim.

National Farmers Union Mutual Insurance Society Ltd v HSBC Insurance (UK) Ltd
Queen's Bench Division (Commercial Court)
Gavin Kealey QC
19 April 2010

AGGREGATOR WEBSITE WITHIN VAT EXEMPTION

The Court of Appeal dismissed HMRC's appeal and held that the introduction of prospective customers to insurers through websites was an exempt supply of insurance-related services and fell within the VAT exemption for the services of insurance intermediaries. HMRC's request for a reference to the ECJ for clarification on the characteristic functions of an insurance broker or agent and whether the exemption was dependent on the existence of a direct legal relationship with both or either of the insurer or insured was rejected.

Commissioners for Her Majesty's Revenue and Customs v Insurancewide.com Services Limited, Trader Media Group Limited
Court of Appeal (Civil Division)
Longmore LJ, Etherton LJ and Pitchford LJ
22 April 2010

AFTER THE EVENT ("ATE") INSURANCE AS SECURITY FOR COSTS

Where litigation was in progress and the defendants had applied for security for their costs, the claimant's ATE insurance policy (which covered their liability to pay the defendant's costs) was capable of providing some security for costs. However, the ATE policy did not provide the same level of security as a bank guarantee because the policy was voidable and subject to cancellation by the insurers. For the security to be satisfactory, it also had to be shown that the insurers could not legitimately avoid liability to pay out for the defendant's costs. There was also no reason why the amount of a security for costs order could not be proportionately reduced to take account of the probability that the ATE insurance policy would cover the defendant's costs.

Michael Phillips Architects Limited v Riklin and others
Technology and Construction Court, Queen's Bench Division
Akenhead J
23 April 2010

Continued...

ARBITRATOR'S STANDARD OF PROOF

Reinsurers appealed against an arbitration award made in favour of insurers which decided that sums payable under compromise agreements were recoverable by the insurer under the terms of the reinsurance. The reinsurers appealed arbitrators' decision on the grounds that arbitrators had not applied the correct standard of proof when assessing whether the claims subject to the compromise agreement were covered. The court found that the correct standard of proof was "on the balance of probabilities" and that this standard had been applied - it was not necessary for an experienced arbitral tribunal to expressly refer to the relevant case law, it was sufficient that the tribunal demonstrate that they had considered and applied the law.

IRB Brasil Resseguros SA v CX Reinsurance Co Ltd
Commercial Court, Queen's Bench Division
Burton, J
7 May 2010

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UK - Regulatory and Legislative Developments

NEW BLOCK EXEMPTION REGULATION FOR THE INSURANCE SECTOR ADOPTED BY THE EUROPEAN COMMISSION

The European Commission has adopted a new Regulation that exempts certain types of agreements in the insurance sector from the EU's general prohibition of practices restrictive of competition. The new Block Exemption Regulation (BER), which came into force on 1 April 2010, continues to exempt two forms of cooperation specific to the insurance sector, namely agreements in relation to joint compilations, tables and studies and co(re)insurance pools. This new regulation will be valid until 31 March 2017.

DAMAGES FOR LATE PAYMENT AND THE INSURER'S DUTY OF GOOD FAITH: ISSUES PAPER 6 PUBLISHED BY THE LAW COMMISSIONS

Following their review of pre-contract disclosure and misrepresentation in consumer insurance, the Law Commission and Scottish Law Commission are conducting a joint review of insurance contract law. The two Commissions have now published an issues paper which considers whether an insurer should be liable for a policyholder's loss suffered as a result of a late or non-payment of an insurance claim. At present, the English case of Sprung provides that a policyholder cannot recover for such losses, even if the insurer wrongfully refuses to pay out on time and the policyholder goes out of business as a result. The issues paper discusses why the two Commissions think Sprung is out of line with modern contractual principles. The two Commissions think that insurers should be liable for the consequences of late payment in appropriate cases and they suggest reforming the insurer's post-contract duty of good faith so that an insurer would be liable in damages for an unjustified refusal to pay out. Later this year the two Commissions plan to publish a further issues paper, looking at the insured's duty to act in good faith after an insurance contract has been formed.

STRENGTHENING THE ADMINISTRATION REGIME FOR INSURERS: HM TREASURY CONSULTATION PAPER

In light of reviewing other insolvency and administrative regimes across the financial services industry, and reflecting on the lessons learnt during the financial crisis, the Government considers that some areas of the administration regime for insurers could be strengthened. The incidences of insurers being put into administration or liquidation in the UK have been low, with no further incidences occurring during the recent period of financial instability. As a result the procedures and processes surrounding insurers entering into administration have not been developed significantly either in practice or in law in recent times. HM Treasury has therefore published a consultation paper which seeks views on proposals to improve the protection and payment of benefits for holders of insurance contracts with an insurer facing financial difficulties, in particular to address gaps within administration regime for insurers in comparison to the liquidation regime.

SOLVENCY II: COMING INTO FORCE DATE DEFERRED

The European Commission has announced that they are proposing to move the date of entry into force of the Solvency II Directive from 31 October 2012 to 31 December 2012 - bringing it into line with the financial year end for insurance companies. The proposal was announced by Michel Barnier, European Commissioner for Internal Markets and Services at the Commission's public hearing on the Solvency II regime on 4 May 2010.

ANTI-BRIBERY AND CORRUPTION IN COMMERCIAL INSURANCE BROKING: REDUCING THE RISK OF ILLICIT PAYMENTS OR INDUCEMENTS TO THIRD PARTIES

The FSA has published a report which describes how commercial insurance broker firms in the UK are addressing the risks of becoming involved in corrupt practices such as bribery. In particular, the report sets out the findings of the FSA's recent review of standards in managing the risk of illicit payments or inducements to, or on behalf of, third parties in order to obtain or retain business. The FSA published its interim findings on this in September 2009. In the report the FSA states that although this work focuses on commercial insurance brokers, many of the issues covered and the examples of good and poor practice are relevant to firms in other sectors who use third parties to win business. The FSA stresses that this report does not constitute nor should it be treated as its formal guidance. However, it expects firms to consider the report's findings, to translate them into more effective assessment of this risk, and to implement and maintain more effective appropriate controls where necessary.

Continued...

PPI: CC CONFIRMS CASE FOR POINT-OF-SALE PROHIBITION

The Competition Commission (CC) has announced that it has provisionally decided that consumers will benefit from the introduction of a point-of-sale prohibition for all forms of payment protection insurance (PPI), with the exception of retail PPI. The point-of-sale prohibition would stop the completion of sales of PPI during the sale of the associated credit product such as a personal loan. It was one of a package of measures the CC planned to introduce following its investigation into PPI, which concluded that businesses that offer PPI alongside credit face little or no competition when selling PPI to their credit customers. The report, and in particular the proposed point-of-sale prohibition, were the subject of a legal challenge last year to the Competition Appeal Tribunal (CAT) by Barclays, supported by Lloyds Banking Group and Shop Direct Group Financial Services Ltd. Whilst upholding the CC's conclusions as to the competition problems in this market, the CAT ruled that it must in particular consider further the role and importance of a potential drawback to the prohibition, namely that it might inconvenience customers. Since then, the CC has been carrying out a detailed analysis of the likely effects of such a prohibition including undertaking customer surveys, and an assessment of parties' internal documents and of various experiments looking at the possible impact of splitting the sales processes of credit and PPI. In its provisional decision the CC has concluded that the benefits of a package of remedies including the prohibition, by introducing greater competition and choice and lower prices to the market, will outweigh the disadvantages, in particular the potential inconvenience to some customers. The exception is retail PPI, where the CC says that it is not clear from the evidence presented so far and from a new survey of retail PPI customers, whether the advantages of introducing the prohibition alongside other measures would outweigh the disadvantages. It has therefore published a Supplementary Notice of Possible Remedies for Retail PPI.■

FSA INTRODUCES TEMPORARY RULE TO GIVE RECENT PPI COMPLAINANTS MORE TIME TO REFER COMPLAINTS TO THE FINANCIAL OMBUDSMAN SERVICE

The FSA has announced a temporary rule to give customers who recently made a complaint about their purchase of a Payment Protection Insurance (PPI) policy more time in which to refer their complaint to the Financial Ombudsman Service. The temporary rule, which suspends the existing six month time limit for referring complaints to the Financial Ombudsman Service, came into effect from on 28 May 2010 and runs until 27 October 2010. The rule applies to recent PPI complainants who have already been sent a final response from a firm between the dates of 28 November 2009 and 28 April 2010 inclusive.■

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US - Recent Cases

"OTHER INSURANCE" CLAUSE DOES NOT PROHIBIT ACTION FOR CONTRIBUTION FOR DEFENSE COSTS

A federal appeals court held that an "other insurance" clause in a primary policy does not prevent an insurer from seeking contribution from a co-primary insurer for defense costs. Texas courts have held that insurers cannot seek contribution or subrogation from co-insurers after paying more than their pro-rata share of indemnity payments because the insurers do not have a "common obligation" to pay the entire loss. The appeals court held that this prohibition does not apply to payment of defense costs because the "other insurance" clause only applies to losses, not defense payments, and the duty to defend creates a "common obligation" of all insurers.

Trinity Universal Ins. Co. v Employers Mutual Cas. Co.
US Court of Appeals for the Fifth Circuit
4 January 2010

DUTY OF UTMOST GOOD FAITH CAN BE MODIFIED BY CONTRACT LANGUAGE

A federal district court held that utmost good faith did not apply where the policy contained language voiding coverage if the insured made an intentional material misrepresentation. The insurer argued that the insured's concealment of material facts breached the *uberrimae fidei* doctrine that applies to all maritime insurance contracts, under which intent to conceal is irrelevant. The court found that the language required an intentional misrepresentation to void coverage, and that it modified the doctrine of utmost good faith and required the insurer to show intent. The court noted a split among federal courts as to whether there was an absolute bar on contractual modification of the doctrine.

New Hampshire Ins. Co. v Diller
US District Court for the District of New Jersey
13 January 2010

INTENTIONAL HIRING OF SUBCONTRACTOR DOES NOT NEGATE OCCURRENCE

The Mississippi Supreme Court held that the intentional hiring of a subcontractor does not defeat a claim for loss caused by the subcontractor's negligence. The insured claimed its general liability policy covered damages allegedly caused by a subcontractor, but the insurer denied the claim A lower court agreed, finding that the definition of "occurrence" excludes expected or intended losses, and that the chain of events leading to loss started when the subcontractor was intentionally hired. The high court said this theory would preclude coverage any time a subcontractor was intentionally hired and then unintentionally caused damage. Interpreting the policy in this way would subvert the general liability policy's language and purpose.

Architex Association Inc. v Scottsdale Insurance Co.
Mississippi Supreme Court
11 February 2010

CLAIM BY REHABILITATOR AGAINST REINSURERS CONTINUES IN FEDERAL COURT

A federal court refused to return a lawsuit to obtain reinsurance proceeds to state court, finding that having a federal court hear the case would not impair an ongoing state rehabilitation proceeding. The rehabilitator of an insurer sued the company's reinsurers to recover money paid in an asbestos settlement. After the reinsurers removed the case to federal court, the rehabilitator asked the federal court to remand the case. The court noted that the rehabilitation statute does not give state courts exclusive jurisdiction. It found that retaining jurisdiction would not interfere with the rehabilitation because the amounts recovered in federal court would be available for distribution to policyholders and other creditors.

McRaith v American Re-Insurance Co. et al
US District Court for the Northern District of Illinois
17 February 2010

Continued...

REINSURANCE INFORMATION NOT DISCOVERABLE IN COVERAGE CASE

A state court in New York refused to allow an insurer to obtain information about its insurer's reinsurance and reserves. The insured argued it was entitled to reinsurance contracts under a New York rule that permits discovery of "any insurance agreement under which any person … may be liable to satisfy part or all of a judgment." The court refused to read the rule broadly to allow discovery whenever reinsurance was available to cover a judgment, but agreed to reconsider the question if the insured could show why reinsurance was relevant. The court refused a request for reserve information, finding such information irrelevant in a coverage suit not involving allegations of bad faith.

Mt. McKinley Insurance v Corning et al
Supreme Court of the State of New York, New York County
25 February 2010

LANGUAGE GIVING INSURER RIGHT, BUT NOT DUTY, TO DEFEND IS UNAMBIGUOUS

A Pennsylvania appellate court found that language in an insurance policy providing that the insurer "may elect to defend" the insured gave the insurer the option, not the duty, to defend the insured. A lower court found the language in the policy was vague and ambiguous and therefore construed the language against the insurer to find a duty to defend. The Superior Court of Pennsylvania reversed, holding that the language was not ambiguous and gave the insurer the discretion whether or not to defend the insured.

Genaeya Corp. v Harco Nat. Ins. Co.
Superior Court of Pennsylvania
15 March 2010

POLICY EXCLUSIONS DO NOT DEFEAT CHINESE DRYWALL CLAIMS

A Louisiana court rejected an insurer's exclusion-based defenses against a claim for damages from defective Chinese drywall. Homeowners filed a claim against an all-risks homeowner's policy for corrosion allegedly caused by gases emitted by the drywall. The company denied the claim, citing exclusions for losses due to pollution, gradual or sudden loss, and faulty, inadequate or defective planning. The pollution exclusion, the court noted, does not apply to damage from substandard building materials, and the insurer conceded it did not apply. The gradual or sudden loss exclusion did not apply where the loss was not damage to the drywall, but consequential damage caused by the drywall, and the defective planning exclusion did not apply where the drywall was performing its expected function.

Finger v Audubon Insurance Co.
Civil District Court for the Parish of Orleans, Louisiana
22 March 2010

LIQUIDATOR HAS EXCLUSIVE RIGHT TO CLAIM FRAUDULENT TRANSFER

A court dismissed a policyholder's fraudulent transfer claims against an insolvent insurer. A Home Insurance policyholder brought suit against Zurich-American Insurance, seeking payment of asbestos liabilities shortly before Home became insolvent and Zurich negotiated contracts allowing it to assume much of Home's business. Plaintiffs alleged those contracts gave Zurich control over Home, which it abused in acquiring Home's assets. The court said the right to bring fraudulent transfer claims against Home belonged exclusively to the liquidator, and language saying the liquidator "may" bring certain claims did not permit third parties to bring claims the liquidator chose not to advance. Claims arising from Zurich's own actions, however, were not barred by the liquidation order, and could proceed.

API Inc. et al v Home Insurance Co. et al
United States District Court for the District of Minnesota
31 March 2010

Continued...

FIRST-TO-FILE RULE INAPPLICABLE TO ACTIONS IN FOREIGN JURISDICTIONS

A federal district court refused to stay or dismiss an action for reimbursement by a cedent against its reinsurers even though the reinsurers had already filed a related suit against the cedent in the Commercial Court of London. The court rejected the reinsurers' argument that the United States' "first-to-file" rule warranted dismissal of the domestic action. The "first-to-file" rule, it noted, is only used to resolve issues of concurrent jurisdiction between two federal courts and does not apply to proceedings in two different sovereign nations. The appropriate process, the court found, is to allow both suits to proceed and to give the first judgment preclusive effect upon the other suit.

Continental Cas. Co. v AXA Global Risks Ltd.
US District Court for the Western District of Missouri
2 April 2010

CAUSE OF ACTION UNDER INSURANCE POLICY ACCRUES WHEN CONTRACT IS BREACHED

A federal appeals court held that the statute of limitations in an insurance coverage case begins to run when the contract is breached, not when the loss occurs. The contract required any suit to be commenced within two years of the date of loss. The insured filed a homeowner's claim with the insurer shortly after the damage occurred, and the insurer investigated the claim for over two years before denying it. The trial court dismissed the lawsuit because the insured filed it more than two years after the loss. The appeals court noted that the statute of limitations only begins to run at the time when all conditions precedent to filing suit have arisen.

Fabozzi v Lexington Ins. Co.
US Court of Appeals for the Second Circuit
6 April 2010

NO DEFENSE FOR SUCCESSOR COMPANY UNDER PREDECESSOR'S INSURANCE POLICY

A federal court in Texas held that a successor company is not entitled to a defense under an insurance policy issued to the predecessor company, where the policy was not assigned to the successor. The successor argued that the insurer was required to provide a defense because the suit alleged that the successor was liable for the predecessor's wrongdoing. The court noted that the successor could not be held liable under state laws that govern the transfer of liabilities to successor companies. Therefore, it held, insurance coverage did not transfer under operation of law.

Ford, Bacon & Davis, LLC v Travellers Ins. Co.
US District Court for the Southern District of Texas
7 April 2010

US - Regulatory and Legislative Developments

PENDING US FINANCIAL REGULATORY REFORM LEGISLATION

As described in previous bulletins, both the US House of Congress and the US Senate have been working on comprehensive financial regulatory reform initiatives. The House passed the Wall Street Reform and Consumer Protection Act on 11 December 2009. On 20 May 2010 the Senate passed its version of the Financial Reform Bill, entitled "The Restoring American Financial Stability Act". At the time of writing, the House-Senate Conference Committee is meeting in an attempt to produce a single version of the two Acts, which will then be sent to President Obama to be signed.

PROPOSED FEDERAL REGULATION OF INSURANCE

The House-Senate Conference Committee is also discussing the proposed federal regulation of insurance. The proposed regulator would be called the Federal Insurance Office and would be based within the US Department of Treasury. The Federal Insurance Office would have responsibility for negotiating international insurance agreements and would have the authority to collect market information from insurers. The House and Senate acts differ on the proposed scope of the Office and its ability to preempt state insurance regulation. The House wording, which gives the Office narrow authority to implement mutual recognition or equivalence agreements, has been supported by the National Association of Insurance Commissioners ("NAIC"). The House-Senate Conference Committee is currently debating the scope of the Office's powers and the interaction between state and federal insurance regulation.

NAIC'S SOLVENCY MODERNIZATION INITIATIVE

The NAIC's Solvency Modernization Initiative ("SMI") continues. As reported previously, the SMI began in June 2008. It is the NAIC's evaluation of the US solvency regulation framework, with an eye on international developments and regulation. On 7 June 2010, the NAIC's Solvency Modernization Initiative (EX) Task Force referred certain questions concerning the potential for changes to risk based capital ("RBC") requirements within the SMI to the Capital Adequacy (E) Task Force. The SMI Task Force believes that RBC requirements should continue to be part of US solvency regulation but has called for a "holistic evaluation" of such requirements. The SMI Task Force has also asked the Capital Adequacy Task Force for a proposed timeline to implement changes to RBC requirements.

RESERVING FOR LIFE INSURERS

As reported in previous bulletins, the NAIC continues its attempts to modernize the regulation of life insurance and annuity products. Instead of the current static formulae for the calculation of reserves, the proposed principles-based approach would allow for the use of risk analysis techniques such as modeling and simulation for establishing adequate reserves, once it is enacted by state legislatures. Principles-based reserving is thought be a better method than the current system to identify tail risks. The NAIC Life and Health Actuarial Task Force has created the Principles-Based Reserving Testing Subgroup to study the impact of principles-based reserving on the life insurance industry. The Subgroup will provide recommendations to the NAIC Principles-based Reserving Working Group and the NAIC Life Insurance and Annuities Committee.

FLORIDA'S REDUCED CAPITAL REQUIREMENTS ON CERTAIN FOREIGN REINSURERS

In 2007 Florida was the first state to pass legislation granting the state's insurance commissioner discretion to relax collateral requirements for foreign reinsurers. In September 2008, Florida officials passed a rule implementing the 2007 legislation which enabled a foreign reinsurer to ask the Florida insurance commissioner to examine its financial solvency and operations and to allow the reinsurer to post a reduced level of collateral.

On 17 June 2010, the Florida Office of Insurance Regulation approved an application by Bermuda-based XL Re Ltd. to qualify as an "Eligible Reinsurer" in Florida. As a result, XL Re Ltd. is required to post collateral of 20% unless amended by the Florida Office of Insurance Regulation. In February 2010, Hannover Reinsurance Co. received similar approval.

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France - Recent Cases

PRIORITY RIGHT OF VICTIMS OF ROAD TRAFFIC ACCIDENTS ON COMPENSATION FROM LIABLE PERSONS

The victim of a road traffic accident suffered 197,600 Euros of resulting damages. Social security entities paid costs of 57,979.19 Euros to cover part of this damage. The victim initiated legal proceedings against the driver involved in the accident and its insurer. The social security also claimed compensation from the latter. The court of appeal ordered the driver and its insurer to pay 98,000 Euros in damages, and ruled that the victim, who had not yet been fully compensated, had priority over the social security for this compensation. The Supreme Court validated the solution. As long as the victim has not been fully compensated, it has priority over the social security on any compensation from the liable person (solution based on Article 1252 of the French Civil Code).

Cour de Cassation, Civ. 2
14 January 2010

NO INSURANCE OBLIGATION FOR LEASEHOLDER UNLESS OTHERWISE SPECIFIED IN THE LEASE

A property investment company initiated proceedings against one of its leaseholders and requested the judicial termination of the lease due to the non-payment of rent and lack of insurance. The court of appeal admitted the claim. The leaseholder lodged an appeal before the French Supreme Court. The latter dismissed the appeal on various grounds, but mentioned that, unless specified otherwise in the lease agreement, the underwriting of an insurance contract is not mandatory for the leaseholder. Lease agreements cannot therefore be terminated because of the lack of insurance of the leaseholder, unless the contract specified an insurance obligation.

Cour de Cassation, Civ. 3
20 January 2010

CHARACTERIZATION OF LEGAL PROTECTION INSURANCE

The victim of an accident brought an action against the liable person and asked its own insurer to cover its solicitor's fees. The latter refused, even though the policy included a “protection of your rights” provision. The policyholder initiated proceedings against his insurer. The court of appeal ruled that such a provision does not constitute an agreement for legal protection, because the policyholder did not conclude a separate policy and did not pay distinct premiums. The French Supreme Court quashed this decision and stated that "*are characterized as insurance for legal protection, any transactions that consist, in consideration of the payment of a previously agreed premium or fee, in covering the costs of proceedings or in providing services arising from the insurance cover in the event of a dispute between the insured - as a claimant or defendant - and a third party, in proceedings or settlement discussions*."

Cour de Cassation, Civ. 2
18 March 2010

INSURER LIABLE FOR THE INSURANCE INTERMEDIARY FAILING TO COMPLY WITH ITS DUTY OF ADVICE

A policyholder contracted, through an intermediary, an insurance contract specifying a monthly indemnity of 20.000 Euros per month in case of incapacity to work. While the insured was on sick leave, insurance indemnities were lower than those stipulated in the contract, due to the general conditions of the contract, which specified that the insurance indemnities would not exceed the actual professional income of the insured. The insured initiated proceedings against his insurer and alleged that the insurance agent failed to comply with its duty of advice, by encouraging him to contract an inadequate insurance contract. The court of appeal, approved by the French Supreme Court, ruled that the insurer was liable for the insurance intermediary who failed to comply with its duty of advice.

Cour de Cassation, Civ. 2
18 March 2010

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UPDATE: THE CREDIT INSTITUTION IN A GROUP INSURANCE CONTRACT IS A THIRD PARTY

We reported in the October 2008 edition of *Global Insurance and Reinsurance Bulletin* that a person who adheres to a group insurance contract, although he or she did not conclude the contract directly with the insurer, has a direct contractual relationship with the latter (Cour de Cassation, Civ. 2, 22 May 2008). In this new case, the French Supreme Court held that the credit institution, which concluded the contract with the insurer, is a third party to the insurance contract between the insured and the insurer. The consequence of such an analysis is that, if the insurer refuses to pay indemnities to the insured, the latter cannot bring a recourse action for such non-performance against the person who initially established the group contract (i.e. the credit institution).

Cour de Cassation, Com.
13 April 2010

France - Regulatory and Legislative Developments

CREATION OF THE SUPERVISORY PRUDENTIAL AUTHORITY

Further to Ordinance 2010-76 of 21 January 2010 merging the banking and insurance approval and supervisory authorities, and at the same time creating a new supervisory authority called the Supervisory Prudential Authority (Autorité de contrôle Prudentiel) ("ACP"), two decrees (Decree 2010-217 and Decree 2010-218 of 3 March 2010) have been implemented in order to detail the functions and powers assigned to the ACP. In addition, ministerial orders appointing the members of the ACP (Order of 5 March 2010, Order of 5 March 2010 and Order of 8 March 2010) were published. Finally the first meeting of the ACP was held on 9 March 2010. This date marks the effective implementation of the ACP.

LIFE INSURANCE: PROPOSED REFORM OF GUARANTEED RATES

The Ministry of Economy, Industry and Employment has launched a public consultation closing on 31 March on a draft ministerial order (arrêté) concerning changes to terms guaranteeing minimum rates of life insurance. The draft order is based on three main proposals:

(i) the introduction of a rule ensuring that the policyholders as a whole do not pay for the guaranteed rates of some policyholders

(ii) obtaining information which is fairer to policyholders by determining the maximum rate that can be guaranteed by an insurer based on the environment of markets bonds

(iii) establishing an overall annual global limit to restrict the resources that an insurer can expend each year in order to finance the guaranteed rates.

This reform shall come into force on 1 January 2011.

REFORM OF CONSUMER CREDIT AND INSURANCE

The project of law regarding the reform of consumer credit which was adopted on its first reading on 27 April 2010 by the Assemblée Nationale includes amendments regarding payment protection insurance. The most significant change concerns the obligation to inform the insurer vis-à-vis the lender and provides that "where an insurance policy was required by the lender and the borrower has subscribed an insurance policy with the insurer of his choice, the latter shall inform the lender of non payment by the borrower of his insurance premium or any substantial change in the insurance contract." The project will be submitted for a second reading before the Sénat in May.

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Spain - Recent Cases

LIABILITY IN LABOUR ACCIDENTS

According to the facts, a glass factory hired a contractor to demolish a building. One of the workers of the contractor suffered an accident and became permanently disabled as a consequence. He filed a claim against the principal and the contractor as he considered that no prevention nor security measures had been taken by any of the undertakings. The Spanish Supreme Court established that, although initially the principal had supervisory duties and it could be held liable for the activity of its contractors, no responsibility can be imputed when the activity of the contractor does not correspond to the activity of the principal; in fact the activity was not being executed in the principal's working place.

Spanish Supreme Court
Labour Division
18 January 2010

MOTOR ACCIDENT COMPENSATION

In the case at hand, the plaintiff suffered a permanent disability due to a car accident resulting in her inability to work. Considering that the plaintiff's salary was more than twice the invalidity benefit, she claimed the compensation. The Supreme Court found that when the compensation determined for economic losses or permanent disability is not sufficient to compensate the consequential damages derived from the accident, and in fact it is not proportional, the compensation amount can be adapted by applying other premises rather than only the 'traffic accidents scale for personal damages'. Therefore, the judgement established that the compensation has to take into account the consequential damages and provide a proportional repair of these too, although it recognised that its total repair cannot be intended.

Spanish Supreme Court
Civil Division
25 March 2010

INDEMNITY PAYMENT

The Supreme Court held that an insurance contract clause providing that the payment of an indemnity is subject to the effective payment of the reinsurers to the insurer was illegal and invalid. The court ruled that these kinds of conditions precedent are contrary to Article 77 of the Insurance Contract Act that foresees that the insured cannot be affected by reinsurance agreements. Furthermore, the Supreme Court held that in the case of co insurance, all intervening insurance undertakings have to be stated within the policy.

Spanish Supreme Court
Civil Division
8 April 2010

Spain - Regulatory and Legislative Developments

MONEY LAUNDERING PREVENTION AND FINANCING OF TERRORISM ACT

The Act 10/2010, dated 28 April 2010, on Money Laundering and financing of Terrorism came into force on 30 April 2010. Its main purpose is to unify in one sole body the regulation in force until now. This Act introduces novelties with respect to the diligence and control measures to be fulfilled by the obliged subjects.

Act 10/2010
28 April 2010

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Italy - Recent Cases

FOREIGN INSURERS SUBJECT TO ISVAP SURVEILLANCE AND MUST BE ENROLLED WITH THE REGISTER OF INSURANCE INTERMEDIARIES

Regional Administrative Court ("TAR") of Lazio recently reaffirmed the Italian Insurance Regulatory Authority ("ISVAP") power of control and sanction over foreign insurance operators, where final beneficiaries of an insurance contract reside in Italy. A Luxembourg insurer filed a petition before TAR of Lazio against a fine issued by ISVAP for not having been enrolled with the Italian Register of Insurance Intermediaries. ISVAP sanctioned the Luxemburg insurance company since it carried out a mediation activity in favour of an Irish reinsurance company, for risks concerning policies issued by an Italian Insurance company and comprised in its Italian portfolio.

The claim of the Luxembourg insurer rejected by the court, was based on the non applicability of the Italian legislation to itself and the consequent lack of competence of ISVAP, since it had its register office in Luxembourg, was subject to the Luxembourg's legislation and to the surveillance of its home country authority and performed its activity out of the Italian territory.

In this regard TAR of Lazio specified that the criteria according to which the Italian legislation applies and as a consequence the relevant local authority is competent, is that of the "*territoriality of the protected interests*" which are involved in the insurance contract.

POLICY CONDITIONS MAY NOT BE INTERPRETED ONLY IN FAVOUR OF AN INSURANCE COMPANY

The Tribunal of Milan partially accepted a petition by a consumers association against an insurer, stating that where policy conditions are unclear, they may not be interpreted only in favour of the insurer.

In October 2009, an Italian association of consumers filed an interim injunction before the Tribunal of Milan, claiming that the resistant insurer's behavior was unfair. In 2001 the insurer had distributed insurance policies which were linked to a Lehman Brother's index. According to the policy wording (which was unclear) the consumers believed that their performance was guaranteed. However, when the polices expired, the insurer refused to pay the amount apparently indicated, proposing in turn either a reimbursement of a sum much less than the premium invested, or the possibility to switch to another insurance policy. The insurer argued that it was Lehman Brothers and not itself that had guaranteed the performance of the policies.

Tribunal of Milan partially accepted the claim of the consumers association considering the policy conditions relating to the final amount of the benefit to be returned were unclear. In the policy conditions there was mentioned the fact that Lehman Brothers was the entity warranting the performance. The Tribunal of Milan ordered the insurer to send to the policy holders a statement admitting that the policy conditions did not clearly indicate that the insurer was not responsible for the performance of the policy. Finally, the judge did not order the insurer to pay the policyholder the guaranteed benefit since such decision could have not been issued after such interim phase of the proceeding.

Associazione Movimento Consumatori v CNP Unicredit Vita S.p.A.

Continued...

LEGAL EXPERT ASSESSMENT MAY POSTPONE APPLICATION OF ONE YEAR TIME LIMIT

The Italian Supreme Court has affirmed that in insurance matters where the insurer must assess the insured's damages by a legal expert, the time limit of one year in which the insured can claim damages may be postponed until after the legal expert has completed his assessment.

In this case, the insured claimed damages from the Assicurazioni S.p.A. resulting from a labour incident. The first Court of Appeals of Genoa rejected the insured's claim for damages because the letter asking for damages arrived after a year from the date of loss and was thus outside the time limit of one year.

In the second instance, the Supreme Court of Cassation accepted the insured's cassation appeal that the legal expert medical check was sufficient to postpone the application of the one year time limit.

M.L. and others vs Generali Assicurazoni S.p.A.

THE LIMIT OF INDEMNITY CAN BE EXCEEDED DUE TO A *MALA GESTIO* OF THE INSURER

The Italian Supreme Court recently stated that the maximum amount of a policy's indemnity can be increased by the addition of interest, re-evaluations and other costs derived from the consequences of non-payment by the insurer. Furthermore, the Supreme Court stated that there is no need to ask for these additional costs in first instance as it is sufficient to claim them at the point when the insurer fails to make payment within 60 days from the date of loss and without the policyholder's *onus probandi*.

In the case in question, the policyholder claimed damages arising as a result of a traffic accident, from Società Assicuratrice Industriale through a Guarantee Fund. The Court of Appeal did not consider that any additional damages, exceeding the limit of indemnity, were payable because the policyholder had not requested such damages and also because there was no evidence of non-payment by the insurer. Nevertheless, the Italian Supreme Court of Cassation stated that, even when the limit of indemnity has been reached, it could be exceeded for non-payment reasons and without the burden of evidence of the non-payment on the policyholder.

This decision, and its derived measures, shows us the courts' efforts in increasing policyholders' safety and protecting them against any risk derived from mala gestio by the insurer.

Grattarola and others vs SAI Assicurazioni S.p.A.

Italy - Regulatory and Legislative Developments

NO RETROACTIVITY OF THE PROVISIONS IN MATTER OF DORMANT POLICIES

With law decree approved by the Council of Ministers for the implementation of the EU obligations in Italy, the retroactivity of the provisions in matter of dormant policies has been abolished.

As a consequence, the discipline in matter of dormant policies shall be applicable only to insurance policies whose statutory limits had not elapsed on 28 October 2008, when the discipline in matter of dormant policies had entered into force.

NEW RULES FOR ON-LINE AND TELEPHONE DISTRIBUTION OF INSURANCE PRODUCTS

On 19 March, ISVAP issued the Regulation n. 34 in matter of distance selling of insurance products, providing more transparency requirements in order to protect the consumers in pursuance to the Italian Consumer Code and Legislative Decree n.70 2003 concerning e-commerce.

The new requirements set forth by such regulation and the new limits in matter of distance selling of insurance products shall be implemented by insurance companies by 15 July 2010. In the meantime ISVAP announced the issuance of further practical guidelines to be followed by the consumers when acquiring insurance products by phone calls and on-line.

The main novelties of the Regulation relate to:

(i) prohibition of discrimination against particular groups of policyholders

(ii) requirement of express consent

(iii) professional requirements to be met by call centres

(iv) transparency requirements and conclusion of the contract.

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ISVAP REGULATION NO. 33 ON REINSURANCE

ISVAP finally issued on 10 March 2010, the long awaited regulation on the taking up and pursuit of reinsurance business in Italy, implementing Title V of Legislative Decree of 7 September 2005 (Italian Insurance Code, the "Code").

The Regulation, which will enter into force on 1 September 2010, disciplines: the authorization procedures to be complied with by domestic reinsurance companies and by branches of extra EU countries, wishing to transact reinsurance business only and the exercise of reinsurance business only by domestic reinsurance companies and by branches of extra EU countries, on the Italian territory, providing tailored rules in matter of:

(i) technical reserves

(ii) assets eligible for technical reserve purposes

(iii) solvency margins

(iv) recovery financial plan

(v) extraordinary management and transactions.

The Regulation also sets forth some mandatory provisions to include into finite reinsurance contracts, while special purpose vehicles fall out of the scope of this Regulation. Rules governing such latter entities will be issued by the Ministry for Economical Development.

ISVAP DOCUMENT FOR PUBLIC CONSULTATION ON SEPARATE MANAGEMENT

On 21 December 2009, ISVAP issued a document for public consultation on the establishment and management of life insurance companies separate managements.

This document will substitute the poor regulation set forth so far by Circular March 26 1987, no. 71, and will apply to life insurance companies having their legal seat in Italy and subsidiaries of third countries life insurance companies.

The main scope of the proposed regulation is to ensure that life insurance companies treat equally all policyholders, regardless of whether they are institutional clients or privileged corporate clients by investment policies aimed at warrant an equal participation to financial gains of the separate managements.

The public consultation procedure will ended on 15 February 2010, while ISVAP is nowadays processing the final version of the regulation.

Latin America - Regulatory and Legislative Developments

INSURANCE UNDERTAKINGS NEED NOT DISCLOSE THEIR SOLVENCY MARGIN ANYMORE

Insurance undertakings in Paraguay are no longer obliged to disclose their solvency margin quarterly. They shall disclose specific financial indicators set out by the Resolution number 11 dated 9 February 2010 issued by the insurance authorities from Paraguay (BCP).

BCP
18 February 2010

THE SBS TAKES MEASURES TO AVOID CONFLICTS OF INTERESTS IN AFP'S INVESTMENTS

The "*Superintendencia de Banca y Seguros*" (Peruvian insurance authorities) and y AFP (Peruan association of pension funds' managers) have announced the amendment of the "*Compendio de Normas Reglamentarias del Sistema Privado de Administración de Fondos de Pensiones del SPP*" (Regulation on Private Pension Funds' Management). This amendment is aimed at avoiding conflicts of interests with respect to AFP's employees when making investment decisions.

SBS
16 March 2010

THE FUTURE FINANCIAL AND INSURANCE INSTITUTIONS ACT

The "*Secretaría de Hacienda y Crédito Público*" (the Secretary of Treasury and Public Credit in Mexico) has submitted to the "*Comisión Federal de Mejora Regulatoria*" (Commission of Regulatory Developments) a draft decree which could lead to the future Financial and Insurance Institutions Act. This proposal is aimed at strengthening the regulation on control and audit, submission of information and corporate government rules so as to improve transparency.

SHCP
30 March 2010

LA SVS AUTHORISES THE IMPLEMENTATION OF SHORTER INSURANCE CLAIMS PAY-OFF PROCEDURES

The "*Superintendencia de Valores y Seguros*" (Chilean insurance authorities) has authorised insurance undertakings to implement a special claims pay-off procedure which will shorten the processing periods of insurance claims deriving from the earthquake which took place on 27 February 2010. These measures are aimed at speeding up indemnity payments on houses affected by the earthquake.

SVS
5 April 2010

CAV ANALYSES INSURANCE ACTIVITY PROJECT ACT

The National Assembly in Venezuela has published the amended version of the "*Proyecto de Ley de la Actividad Aseguradora*" (Insurance Activity Project Act). The "*Cámara de Aseguradores de Venezuela*" (Venezuelan insurers' chamber) held a meeting to discuss the content of this recent version of the aforementioned Project Act due to the amendments made with respect to the original Project Act already discussed and submitted to public consultation in April 2009.

CAV
22 April 2010

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China - Regulatory and Legislative Developments

CIRC PROMULGATES GUIDELINES ON ACCOUNTABILITY OF PERSONNEL AT INSURANCE INSTITUTIONS

The Guidance Opinion on Accountability for Insurance Institution Cases, effective 1 July 2010, supersede the Interim Measures for Accountability for Leaders of Major Cases Involving State-owned Insurance Institutions issued by CIRC in 2006. The new guidance opinion applies to private insurance companies, insurance asset management companies and their branch entities. Insurance institutions are required to implement internal reporting procedures and rules on establishing direct and indirect accountability for personnel, including agents and sales staff. The guidance opinion elaborates on the scope of cases (including criminal cases), definition of persons accountable for cases, and measures and thresholds for penalising personnel responsible for cases. Management personnel, including directors, supervisors, and compliance managers may be held indirectly responsible in cases arising as a result of negligence or failure to exercise utmost diligence in performing their duties.

CIRC ISSUES NEW RULES ON ACCOUNTABILITY FOR INSURANCE INTERMEDIARY PERSONNEL

The Circular on Relevant Issues to Seriously Punish Illegal Activities of Insurance Intermediaries and Responsible Personnel, published on 16 March 2010, requires insurance intermediary institutions and their management be held responsible for illegal intermediary activities carried out by personnel. The circular also clarifies that insurance intermediaries will be held to the same standards detailed in the Guidance Opinion on Accountability for Insurance Institution Cases described in the item above.

NEW ADMINISTRATIVE MEASURES ON PROPERTY INSURANCE CLAUSES AND RATES

The Measures for Administration of Insurance Clauses and Insurance Rates of Property Insurance Companies, issued by the CIRC effective 1 April 2010, replace previous measures published in 2005. The new measures include three major developments:

(i) regional insurance products will be filed with the CIRC by the head office of insurance companies;

(ii) for co-insurance, the insurance clauses and rates of the lead insurer (as approved by or filed with the CIRC) may be used by other insurers without additional approval or record-filing; and

(iii) insurance companies must establish an internal control and accountability system and file those relevant administrative measures with the CIRC.

CIRC TIGHTENS SUPERVISION AND REGULATION OF INSURANCE GROUP COMPANIES

The Provisional Measures for Administration of Insurance Group Companies, effective 12 March 2010, strengthen regulation and supervision of insurance group companies. For example, the registered capital of insurance group companies must be at least RMB 2 billion and the main business of insurance group companies must focus on equity investment and management. In addition, the amount invested by insurance group companies in non-insurance financial enterprises may not exceed 30% of the combined net assets of the group company and its affiliates.

CIRC UPDATES RULES ON BASIC SERVICES FOR PERSONAL INSURANCE

The *Provisions on Basic Services for Personal Insurance Business*, effective 1 May 2010, regulate services relating to personal insurance products provided by insurance companies, insurance agents and other service providers. The provisions set out comprehensive rules on various business activities, including the sale of personal insurance products, insurance enrolment, return visits by sales personnel, retention of insurance contracts, claim settlement and information disclosure. Insurance companies are required to notify insureds of any incomplete or incorrect information in applications within five working days of receipt and must maintain a call centre available to customers 24 hours a day.

CIRC PROVIDES GRACE PERIOD FOR INSURANCE COMPANIES ON CERTAIN COMPLIANCE AND BRANCH RESTRUCTURING ISSUES

Following the Provisions for the Administration of Insurance Companies, effective 1 October 2009, the CIRC promulgated the Circular on Several Issues regarding the Implementation of the Provisions for Administration of Insurance Companies on 5 March 2010. The circular provides insurance companies with a grace period until 1 October 2011 for compliance with certain requirements under the provisions. The substantive and documentation requirements for converting operational departments to branch companies are also listed.

Continued...

CIRC ALLOWS CROSS-SELLING OF INSURANCE BETWEEN GROUP COMPANY ENTITIES

The *Circular on Relevant Issues Involved in Standardising Cross-selling Business of Insurance Companies*, effective 30 March 2010, lifts previous restrictions by providing that cross-selling of insurance products may be carried out between different insurance group companies. Previously only intra-group cross selling was permitted.

NEW REPORTING REQUIREMENTS FOR LIFE INSURANCE COMPANIES

The CIRC promulgated the *Circular for Life Insurance Companies to File Periodic Product Summary Reports*, effective 8 April 2010. The circular requires life insurance companies to submit quarterly reports for the first three quarters and a year-end annual report. The circular further specifies content requirements for the quarterly and annual reports, which must include sales statistics and analysis. This circular supersedes Article 5 of the *Measures for Administration of the Examination, Approval and Record-keeping of Personal Insurance Products* (effective 1 July 2004).

CIRC REITERATES RESTRICTION ON COMPANIES INSURING EMPLOYEES

The CIRC issued the *Reply on Whether Employing Units May Purchase Individual Insurance Products for Employees* on 30 March 2010, confirming that individual personal insurance can only be purchased by individuals and insurance companies shall not accept employing units' purchase of individual personal insurance for individuals as policyholder. The reply clarifies that this restriction, included in a circular issued by the CIRC in 2000, remains valid under the revised *Insurance Law*.

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Russia - Regulatory and Legislative Developments

CHANGES IN INSOLVENCY LAW FOR INSURANCE COMPANIES

The law coming into force on 27 July 2010 introduces a number of new features into the insolvency procedures applicable to Russian insurance companies.

It sets out a new procedure aimed at restoring solvency of a troubled insurance company, including the development and adoption of a financial rescue plan and bringing in a temporary administration upon a decision of the Federal Insurance Supervision Service. In the latter case the powers of managing (executive) bodies of the insurance company become suspended. The law also sets up a fairly detailed procedure on the transfer of the insurance portfolio in insolvency.

The court has granted with the authority to involve the relevant self-governing organisation of insurance companies into the insolvency procedures. The Federal Insurance Supervision Service becomes obliged by law to participate in the insolvency procedures.

NEW CAPITAL REQUIREMENT FOR RUSSIAN INSURANCE COMPANIES

The new law coming into force on 1 January 2010 increases significantly the general capital requirement for Russian insurance companies. The basis capital requirement of RUR 30,000,000 (EUR 750,000) will quadruple and amount to RUR 120,000,000 (EUR 3,000,000). There are a number of stepping-up coefficients for various types of insurance companies with the maximum of four for reinsurers.

COMPULSORY CLINICAL TRIAL INSURANCE

The Federal Law "On the Circulation of Pharmaceuticals" coming into force on 1 September 2010 requires all clinical trial companies to insure life and health of patients involved in clinical trials (compulsory insurance).

The insurance compensation is limited by RUR 2,000,000 (EUR 50,000) for death of a trial patient and varies in the range of RUR 300,000 to 1,500,000 (EUR 7,500 to 37,500) for personal injury. However, the insurance compensation may be increase by the court hearing the case.

The insurance premium and payment schedule, standard terms of insurance and some other conditions of the compulsory insurance should be set out by the Government of Russian Federation. At the moment the Government has not issued the regulations.

QUOTA FOR FOREIGN INSURERS

The Federal Law "On the Organisation of Insurance Business in Russian Federation" sets out a 25% limitation (quota) on the participation of foreign insurers in the aggregate share capital of Russian insurance companies. The right to calculate the actually used quota is delegated to the Federal Insurance Supervision Service, which is a licensing and regulating authority.

The Federal Insurance Supervision Service issued the calculation showing that as of 1 January 2010 the total share capital of Russian insurance companies was at the level of 147,788 million rubles (EUR 3,694,700,000). Foreign investors and their subsidiary undertakings held 16.02% of the total, which makes another RUR 9,543,657,560 (EUR 238,591,439) available for foreign investments within the quota.

PROPOSAL FOR REGULATORY CHANGES

Pursuant to the plan of the administrative reform the Russian Government introduced to the Russian Parliament a draft bill intended to prohibit insurance companies to issue guarantees, regulated as banking guarantees under paragraph 6 Charter 23 of the Russian Civil Code.

At the moment both banks and insurance companies could issue such an instrument to guarantee obligations of third parties. Among other uses such guarantees issued by insurance companies are accepted by the Russian customs authority to secure the payment of custom duties and qualify as proper guarantee required for those carrying on touristic business.

This overlap in banking and insurance businesses has been constantly attracting criticism from the Federal Insurance Supervision Service, which recommended the members of the Russian Union of Insurers to avoid using such an instrument in practice.■

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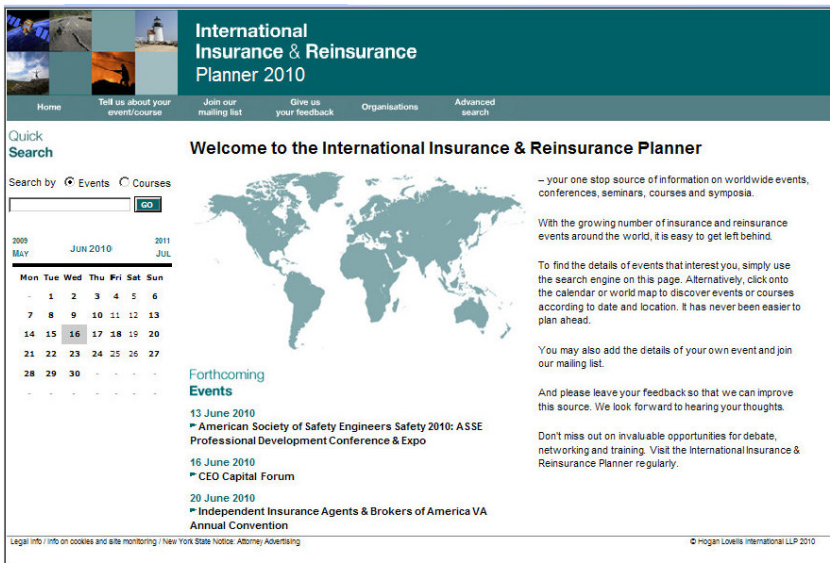
Insurance and Reinsurance Planner

Everyone in the insurance and reinsurance market will know that the number of insurance and reinsurance related events is huge and that it is difficult to keep track of training and information gathering opportunities. The aim of the Insurance and Reinsurance Planner is to provide a one-stop source of information on forthcoming major international insurance and reinsurance conferences, seminars and symposia around the world.

The Planner is a valuable notice board for the international insurance and reinsurance community, providing information on what is taking place, when and where.

It is available online (entirely free of charge) at **www.reinsuranceevents.com** where it is possible to search for events and courses by date, country or organisation and drop those you are interested in attending into your electronic diary. You can also use the online form to submit events which can be viewed on line.



This bulletin contains short reports of significant recent developments in the law of insurance and reinsurance and related topics around the globe. In this form, and due to the vast pace at which legislative and regulatory issues develop, it cannot be fully comprehensive. It is written in general terms and its application to specific circumstances will depend on the particular facts. The contents of this bulletin are current as at the date of publication.

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