

Insurance and Reinsurance Coverage and Claims Expertise



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Welcome

Our Insurance and Reinsurance Group is a recognised market leader and is consistently ranked among the UK's top legal insurance practices in the leading legal directories. We regularly handle large, complex claims as well as advising on non-contentious matters, including advising on policy wordings and regulatory issues, both domestically and internationally.

We are part of a full service commercial law firm and are able to call on specialist support from market leading colleagues across a range of disciplines, including tax, pensions, competition, financial services regulation, employment, corporate, banking and international finance, construction, energy and projects, real estate, planning, environmental and health and safety. The fact that we can offer that expertise in London, Bristol, Sheffield, Scotland and Hong Kong (as well as across the entire CMS network), and that we have been doing so successfully for so long, sets us apart from our competitors.

As part of the CMS network, we can offer the services with more than 80 offices in over 45 jurisdictions across Europe and beyond and, thanks to the way we are structured, we can provide specialist insurance lawyers who understand the local legal and commercial markets. As a firm with global links we have significant expertise of co-ordinating multi-jurisdictional litigation.



Band 1 ranking: Professional Negligence: Technology & Construction (London)

Chambers and Partners



Tier 1 ranking: Professional Negligence (Bristol)

Legal 500



CMS offers an array of services to leading insurers, who benefit from its strong international presence.

Chambers and Partners



CMS is best known for its work for non-marine insurers, reinsurers and insurance brokers, particularly in cases involving professional negligence, aviation, construction and coverage issues.

Legal 500



The CMS team specialises in a variety of negligence cases, with particular expertise in insurance, financial and construction-related claims, and further experience handling claims relating to the legal sector.

Chambers and Partners



CMS has additional strength in the reinsurance market.

Chambers and Partners



CMS' Bristol team continues to be highly active in the construction sector, representing clients including architects, engineers, surveyors and contractors in high-value disputes. The practice is also frequently instructed by other professionals such as solicitors and company directors.

Legal 500



Accident and Health

Our specialist team is experienced on advising on all aspects of accident and health claims including bodily injury, critical illness, health insurance, income protection insurance, life and terminal illness cover, personal accident, permanent total disablement and travel. We are experienced in advising on policy coverage and recoveries actions. As well as regularly advising on claims (both direct and under reinsurance covers) in this sector, we also advise on policy wordings and contractual documentation relating to coverholders and claims handling.

We understand the potentially sensitive nature of such covers and are up to speed with issues arising under the Consumer Insurance (Disclosure and Representations) Act, the Equalities Act and the Consumer Rights Act. We are well versed in handling claims before the Financial Ombudsman Service and acted for one of the UK's largest financial advisor networks and their professional indemnity insurers in *Clark v In Focus*, which determined that the FOS could not make directional awards in excess of the jurisdictional award limit.

As well as our UK expertise, we are able to call on the services with more than 70 offices in over 40 jurisdictions across Europe and beyond to provide specialist insurance lawyers who understand the local legal and commercial markets.

Our experience

Direct insurance claims

- Advising a European health insurer MGA on various claims emanating from Switzerland, the US, South America and Israel.
- Successfully advising the insurers of a group travel cover in respect of a claim before the FOS concerning cancellation of a holiday due to Zika virus including issues of whether pregnancy fell within the definition of "illness" in the policy.
- Advising on a high value medical matter concerning problems arising during transportation of an insured between hospitals.
- Defending a claim by a minor and their litigation friend concerning personal injury and psychiatric harm.
- Advising on issues arising out of placement through coverholders of high volume travel insurance business, which involved regulatory, tax and agency issues.

Recovery actions

- Defending a Portuguese hotel in a claim for paraplegia allegedly resulting from a swimming pool accident. The claim involves purportedly inadequate security arrangements surrounding access to a swimming pool after hours. The claimant dived into the unattended pool and suffered traumatic brain injuries.
- Successfully advising a Mexican hotel chain in connection with a recovery claim by a tour operator for alleged holiday sickness claims. The claims affected a number of guests at a hotel who allegedly contracted gastric illnesses whilst staying there. The tour operator was sued and sought recovery from the hotel.

Reinsurance claims

- Acting in a substantial number of multi-million dollar personal accident disputes including those relating to PA LMX Spirals and to Unicover retrocessional business.
- Acting for a US A&H insurer on a US\$100 million reinsurance claim for recovery of settlements of inwards PA claims following the World Trade Center disaster.
- Representing CNA in Commercial Court litigation alleging fraud in the placement of Occupational Accident excess of loss treaties generating claims of up to \$500 million.
- Policy and contractual drafting
- Advising on product development and regulatory issues on the expansion of insurance business into new EU markets.
- Advising on a number of multi-national global programmes, including a leading insurer, on whether companies purchasing policies which cover individual employees and their family members have sufficient insurable interest in the subject matter of the cover for the contract of insurance to be enforceable under English law; advising on possible solutions to make the cover available in the context of a multi-national programme.
- Drafting claims handling agreements for an insurer governing the relationship with agents in the UK and US.
- Drafting binding authority agreements.
- Drafting TOBAs, SLAs and claims handling agreements between insurers and TPAs concerning claims handling, amongst other issues, which included advice on regulatory, data protection and TUPE provisions.



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Accountants

We have an experienced team of lawyers who advise accountants and actuaries in personal liability claims. CMS' specialist team handles claims of all sizes, undertaking work in areas such as: audit, tax advice, investment advice, company, partnership and share valuations, expert reports, trustee liability, insolvency, actuarial calculations, as well as disciplinary and regulatory investigations.

Our expertise has been gained over many years of instructions both from professional indemnity insurers on behalf of firms of accountants, and direct instructions from accountancy firms. Our accountants' PI team is based in London, Bristol and Edinburgh. CMS provides access to our specialist lawyers in the UK and in other jurisdictions so that we can draw as needed on expert advice – from pensions lawyers in Paris to tax lawyers in Algiers.

We have acted for many of the UK's top 20 accountancy firms including under panel arrangements. Our team also has an excellent reputation in the insurance market, with numerous insurer panel appointments, which is often helpful to the accountancy firms we represent.

Our experience

Audit

- We frequently act on behalf of auditors in respect of claims from their audit clients and from those who allege that they have relied, to their detriment, on negligent misstatements in audit reports such as investors, bankers and suppliers. These claims are frequently both high profile and high value; cases include multi-million pound audit negligence claims.
- **Demands for audit files:** We have dealt with a number of situations where former audit clients have demanded the audit files. This was frequently at an early stage of a complaint and as part of a 'fishing expedition' for information that might justify a negligence claim. We have identified the documents to which the requesting party was not entitled avoiding the accountants prejudicing their position.
- **Qualifications to audit report:** Advising a large firm at short notice on whether any qualification could and should be made to their audit report, in

the context of an official investigation into the audit client, and in light of concerns about tipping off their client.

- **Failure to identify fraud:** We have acted for auditors accused of failing to identify fraud and have defended claims on numerous grounds including the accountants' limited scope of duty, contractual exclusions, causation and contributory negligence arguments as well as caselaw relating to the irrecoverability of certain types of loss.

Tax

- We work closely with our specialist tax lawyers to defend claims arising from the formation of complex tax structures, which have generated unwanted tax bills both for corporate and personal clients. The claims, including income tax, IHT, corporation tax, CGT, VAT, NIC and EIS advice, frequently run into millions of pounds and often involve investigations by HMRC.

- **Tax mitigation schemes:** We have defended numerous claims alleging negligence in relation to failed tax mitigation schemes, initially largely film and technology schemes but more recently including schemes concerning environmental credit tax reliefs, SDLT and employee benefit schemes, as well as other bespoke tax planning which has failed. Our team has substantial experience of these schemes and defending accountants and other professionals facing allegations of this nature, including defending a large accountancy practice and their wealth management team.
- Given HMRC's approach to such schemes, as well as other tax planning considered valid at the relevant time, this area continues to represent risk to accountants.
- **Tax advice errors:** In one example, our accountant client inadvertently gave information on the deadline for claiming capital gains tax rollover relief that did not reflect a recent change in the law. We focussed on establishing whether this error had in fact resulted in any loss and on the distinction between tax deferral and tax avoidance. In another example, our accountant client provided incorrect advice on the amount of capital gains tax that would be payable on a distribution from an overseas trust. We concentrated on finding a practical solution which would mitigate the accountant's liability and enable its client to avoid a loss without the need for litigation.

Disciplinary Investigations

- The current political climate has created a tendency toward more interventionist regulation with greater powers and substantial fines. This was certainly true of the FRC; ARGAs will have more enforcement powers and should, according to the chair of the Parliamentary BEIS Select Committee, "be unapologetic about using them". In this environment you can turn to us as a firm with a track record of advising on and defending such investigations. In addition to our experience, our size means that we have invested in data analytics technology which will speed up document extraction and review at the outset of an investigation, and we have dedicated teams of paralegals who can be tasked with your matters, allowing for the early case assessment crucial in these situations.
- **FRC:** Defending the former CFO of a listed accountancy firm in an FRC investigation.
- **IPA:** Defending a large accountancy firm in respect of an IPA investigation.
- **FRC:** Advising a partner in a top five accounting firm in relation to an FRC interview.
- **SFO:** Assisting a well known accountancy firm in respect of an SFO investigation into a former client. We assisted in preparation for a PACE interview and advised on confidentiality issues and tipping off.

Advisory

- We have advised accountants in numerous other situations, for example in relation to consultancy advice, as trustees or as insolvency professionals. Our breadth as a firm means that we have specialist lawyers – in areas such as insolvency, tax and corporate (including many other jurisdictions) – who can provide specialist input where needed. We also have good relationships with a number of firms who we turn to as expert forensic accountants as and when needed.
- **Debt for equity swap:** We advised on a failure by accountants to consider the financial implications of recommending a debt for equity swap whereby a new class of share was issued; which resulted in the inadvertent dilution of existing shareholders. The issuance of new shares could not be reversed without court and HMRC approval (*Power Adhesives Ltd v HMRC*).
- **Business valuation:** Our accountant client had been asked to value the assets of a dental partnership from which one partner was retiring. After a binding valuation was given, one of the parties involved claimed that his share had been negligently undervalued. We defended the accountant, establishing that the basis for the valuation had been justifiable and the claim was dropped.
- **Drafting accounts:** Our client had been instructed to draw up final accounts of a business that was being acquired. Following completion of the transaction, it appeared that the parties had understood differently what was meant by a 'cash-free, debt-free basis' and the vendor had paid a pre-completion dividend to shareholders. We defended the claim on the basis that the contract wording was the responsibility of the solicitors and not the accountant.

Our other experience

- **Trustees:** Claims are frequently made against accountants when holding personal appointments as trustees. We have acted in numerous cases advising on all aspects of trustees' exposure, obtaining relief by rectification where possible in order to alleviate unwanted tax liability. Our experience includes defending accountant trustees in £6 million claim by beneficiaries making allegations of deliberate concealment and fraudulent breach of trust against our accountant clients and other professional trustees. The claimants were put under sustained pressure by the co-defendants working together, resulting in a number of costs awards against the claimants. The claim was ultimately resolved by way of a contribution to costs only.

- **Insolvency:** We advise accountants in respect of claims against them in their capacity as liquidators, administrators and administrative receivers obtaining early strike out relief when appropriate; this work can encompass significant issues for both the insolvency practitioner and the insurance market. These claims also generate numerous disciplinary complaints against accountants; we advise in respect of the complaints and deal with the disciplinary proceedings.
- **Share valuations/opinions/reports:** We advise in respect of claims arising from the alleged negligent valuation of a shareholding pursuant to a shareholders agreement and all circumstances in which third parties allege reliance. We have acted for accountants whose valuations of shares have been challenged, both in regard to acquisition or disposal of businesses and on the departure of partners.
- **Expert reports:** We advised accountants whose former clients allege that expert reports were prepared negligently, whether in a commercial or matrimonial context.



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Particular expertise in disputes involving financial negligence.

Legal 500

Actuaries

We have a long history of advising actuaries and pensions professionals in how to resolve complaints and disputes as well as many other financial service professionals such as wealth managers, IFAs and fund managers. We work closely with our leading pensions practice who have unrivalled experience of acting for trustees and employers of occupational defined benefit and money purchase schemes.

Our experience

- Handled the first large litigation against an actuary and won (*NRG v Bacon & Woodrow*).
- Acting in a claim for negligent loss projections prepared by an actuary for a reinsurer.
- Acting in a claim being pursued against actuaries by an insurer re RITC calculations.
- Successfully opposed the judicial review of pension fund valuation against appointed actuary.
- Representing an actuary re claim by SITA alleging negligent advice by actuaries re global employee benefit scheme.
- Representing insurers and appointed actuary of pension scheme in respect of a claim concerning the amendment of a trust deed which failed to achieve uniform reduction of benefits.
- Advising pension administrators re transfer of defined benefits v defined contributions schemes.
- Defending a leading pension administrator and a benefit consultant in respect of a claim relating to equalisation and scheme closure.
- Defending one of the leading employee benefits providers in respect of a claim for maladministration and negligent actuarial advice.
- Acting for a leading SIPP/SSAS provider dealing with complaints and claims arising out of its role as trustee and administrator.
- Defending actuary appointed as administrator of an employer scheme where a dispute has arisen as to a mismatch in member benefits compared to those provided by the previous administrator.
- Highly experienced in assisting clients dealing with FOS, POS and TPAS complaints.
- Dealing with over and under payment claims, incorrect quotations and calculations and data protection issues.
- Advising on the unauthorised payment regime and dealing with reports to HMRC.



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Aerospace

CMS' aerospace team has broad experience of advising reinsurers, insurers and insureds on various aspects of aerospace liability and insurance & reinsurance policy coverage.

We have advised on several high profile aviation losses occurring in the UK and around the world, including, representing a broad spectrum of aircraft operators and manufacturers, engine and components manufacturers, as well as airport authorities and ground handlers.

For liability matters, our expertise covers hull, passenger, cargo and third party claims, general liability claims. This includes advising local counsel on the various methods of obtaining evidence abroad.

Our team has handled complex coverage disputes under aviation policies (hull all risks and war) and we regularly advise on aviation policy wordings. We have dealt with claims arising out of activities in space. We are also familiar with the regulations and insurance arrangements associated with satellite activity.

Our enviable network of offices allows us to advise quickly in many of the major aerospace jurisdictions around the world, providing sound local capability, whilst being available locally to serve the London aviation market. Further, we are able to call on many other specialist colleagues in such areas as aviation financing, planning and real estate work including airports, cyber risks and technology, media, telecoms and corporate finance as well as addressing such issues as outsourcing and distribution in the aerospace field.

Our experience

Coverage

- Advising London reinsurers on several cases involving coverage of aircraft lessors arising under AVN67B, especially for theft of aircraft.
- Preparation of expert underwriting evidence in the 'Blue Sky' litigation.
- Advising insurers on coverage under Ariel form hangarkeepers policy for alleged defective maintenance work on engines suffering from oil leaks.
- Defending insurers following a helicopter crash in a claim based on open pilot clause.

Hull

- Preparation of expert evidence in valuation of fire damage to composite materials.
- Advising hull insurers in respect of damage to a Boeing 737 aircraft caused by ground handling agents.
- Advising in respect of the January 2013 Vauxhall helicopter crash.
- Representing an airline and its insurers and reinsurers following a crash over Lake Constanz.

Liability (e.g. airline, MROs)

- Advising London Market insurers and one of their insureds in respect of Malaysian Airline Systems MH17 loss.
- Representing airlines against claims for injury following alleged emergency and heavy landings.
- Representing a defendant MRO in a Commercial Court claim about conversion of an aircraft against the exercise of a lien for unpaid charges on repair work and subsequent enforcement of a judgment in Nigeria.
- Advising insurers and their insured, a Nigerian operator, on claims following a fatal accident from a domestic flight.
- Advising a Pakistani airline on a contractual dispute over an engine maintenance programme.
- Advising insurers in relation to liabilities arising from the Eyjafjallajökull volcanic eruption in Iceland.

Products Liability

Claims involving

- Engines (including repair and defect claims)
- Helicopters
- An allegedly defective seatbelt
- Cabin crew galley equipment

Airports/Ground handling

- Advising a Mexican Airport and their insurers on claims for occupational liability for death on airport premises.
- Acting for the Brussels Airport Corporation and its insurers in proceedings following a catastrophic fire at an airport hanger at Brussels Zaventem Airport that resulted in the loss of three Airbus A-320s and one Hercules C-135.



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- Acting for the Brussels Airport Corporation in relation to a variety of issues relating to theft and robbery of high value consignments, including the well publicised February 2013 theft of a significant value of diamonds from the cargo hold of an aircraft on the ground at the airport.
- Advising a carrier in connection with injuries to ground staff and maintenance crew during routine operations.
- Advising a ground handler in respect of damage to military jet.
- Advising in relation to claims against the Spanish airport and air traffic control authority in relation to the 2010 air traffic controller strike.

Subrogation

- Representing a foreign insurance company in subrogation proceedings against the Krasnodar Airport in relation to ground damage.
- Representing a Russian air carrier in recovery proceedings against the Sheremetyevo International Airport in relation to bird strikes.

Reinsurance

- Advice on application of AVN41A.
- Acting for a leading reinsurer in relation to various disputes arising from the Air France Concorde loss.
- Acting for insurers/reinsurers of American Airlines, United and airline security companies in relation to the issues arising from the \$4.4 billion World Trade Center property subrogation claims.

Policy drafting

- Advising UK insurers on developing policies to cover unmanned aerial vehicles.
- Assessment of the impact on aviation insurers of the Insurance Act 2015 and the Enterprise Act 2016.
- Providing policy drafting advice to insurers on a national aviation authority liability policy.



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Agriculture – Bloodstock and Livestock

Our insurance team regularly handles matters relating to agriculture issues including matters relating to livestock. We are also experienced in dealing with the full range of issues and claims facing the bloodstock market and its insurers including acting for studs, transporters, trainers, veterinarians and owners.

We deal with claims both before and after litigation commences, identifying the best strategy to bring about a cost effective solution. In addition to our dispute resolution expertise, we can also advise on policy drafting and policy coverage.

Recognising that agriculture, bloodstock and livestock claims are often international in nature, we are able to call on the unrivalled geographical coverage and grass roots local knowledge of our CMS colleagues in over 40 jurisdictions across Europe (and beyond).

- Advising an international market on rights of avoidance of an agriculture policy arising from a claim by a fish farm in Turkey.
- Advising London Market insurers on coverage issues relating to the fishfarm losses in Canada following 'superfreeze'.
- Acting for Lloyd's underwriters on numerous All Risks Mortality claims concerning racehorses and breeding stallions, including advising on coverage issues.
- Acting for London Market insurers in respect of issues relating to bloodstock coverholders.
- Defending bloodstock brokers in a loss of use claim in respect of an international dressage horse.
- Representing clients in respect of theft in transit claims.
- Representing brokers involved in the dispute over the insurance of Shergar, which culminated in the *O'Brien v Hughes-Gibb Ltd* trial.
- Retained to investigate regulatory issues arising from suspicious claim settlements between a broker and an international stud farm.
- Advising a leading racecourse and their insurers in relation to a subrogated action concerning the postponement of a race meet.



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Banks and Financial Institutions

The economic crisis of 2008-2009 left banks and financial institutions in a period of unprecedented turmoil which led to an increased exposure for insurers in the banks and financial institutions sector. Our team has wide ranging experience in dealing with large, complex cases as well as the smaller day-to-day claims on insurances in this sector.

Whether faced with a first party fidelity claim under a Bankers Blanket Bond or Fraud cover or a third party liability claim under a Professional Indemnity or D&O policy, whether you wish us to analyse the policy coverage position, monitor and report to you on the handling of the underlying issues by the insured or handle a policy coverage dispute with your insureds, we have the experience and personnel to assist and guide you towards a legally sound and commercially viable solution.

Our Experience

- Advising insurers on policy coverage issues in relation to claims made against an insured financial institution. These claims arise from investments made in products developed by Lehman Brothers and from losses sustained as a result of the bank's collapse.
- Advising BBB insurers of a CEE bank in respect of coverage issues following an alleged fraud by the bank's senior employees.
- Advising insurers on coverage and subsequently advising the insured on defence and liability issues in a claim by three Swiss banks following a major fraud involving trade finance transactions in the Ukraine.
- Advising insurers of financial institutions on coverage issues associated with large scale technology failures.
- Advising insurers of financial institutions on coverage issues arising in respect of claims which seek to challenge and hold those FIs responsible for the ethics and wider socio-economic impact of their investment decisions.
- Advising leading financial institution insurers in connection with claims made under fidelity cover for two Russian branches of international banks. These claims concern losses arising from alleged fraud connected to loan/mortgage portfolios.
- Advising insurers of the administrators of an umbrella company in Guernsey (and separate subsidiary companies it set up) in relation to potentially significant claims by investors into those companies. We used our financial services department to advise on particular areas that were investigated by the FCA in the UK and ensured that the position of the administrators was protected in Guernsey and the UK.
- Reviewing, analysing and advising a leading insurer on its exposure under a series of commercially sensitive agreements relating to the transfer of risk in securitised life insurance products.
- Advising several insurers on coverage aspects of claims against banks and building societies arising out of mortgage fraud.
- Advising insurers in relation to coverage following the collapse of a bank's securitised sale of £1.4 billion of mortgage debt.

- Advising major FI insurers and reinsurers on the drafting of policy wordings for use in the London market and developing European markets with the assistance of our overseas and CMS offices.
- Acting for the insurers of subsidiary of a leading European bank involved in a major fraud (US\$180 million) in Hungary, including defending numerous claims brought by investors in the Hungarian Courts.
- Representing the insurers of a leading venture capital fund in relation to claims of fraudulent mis-representation of the securitization and marketing of the bonds issued to investors relating to a leading electrical goods retailer.
- Advising insurers on coverage for US securities claims against a hedge fund relating to its involvement in share offerings by NASDAQ listed companies.

- Advising insurers in respect of claims arising in connection with losses suffered by with-profits funds as a result of ‘cherry picking’ by traders at an investment manager.
- Advising insurers in respect of a claim against the fund management arm of a bank for making investments in breach of investment guidelines.
- Advising on coverage available under an Insurance Company Professional Liability Policy in respect of class actions brought in various Canadian provinces on behalf of Canadian business owners and self-employed professionals, who claim they are wrongly being denied coverage under their business interruption insurance policies for losses suffered as a result of COVID-19.



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Casualty

Our casualty insurance team regularly advise the market upon coverage issues arising under Commercial Combined Liability policies, as well as defending claims made by third parties and advising on a range of health and safety related issues.

Our Experience

Employers' Liability

- Defending a construction firm in an employers' liability claim where the employee was fatally injured. This sensitive case was complicated by the requirement of a large number of defendants collaborating to agree the apportionment of liability and quantification of the claim.
- Advising on coverage and then defending claims by employees of an energy company following kidnap when working abroad (failure to maintain safe place of work).
- Advising in connection with an offshore gas release resulting in the prosecution of an employer (successfully defended) multiple personal injury claims against the employer for injuries and PTSD.
- Successful defence of a vicarious liability claim brought against the prime contractor by a sub-contractors employee alleging the primary contractor had knowingly allowed a hostile work environment to develop, despite being aware of the issues on site, resulting in one of the prime contractor's employees injuring the sub-contractor employee.
- Advising a major UK government department on over 1400 current legacy claims arising from the former nationalized coal industry, including the defence of injury claims through group litigation which give rise to significant reputational and expenditure risks.
- Representing the government in several high profile group actions arising from the nationalised industry including at first instance and on various appeals: *Griffiths v British Coal Corporation* (COPD); *Armstrong and Others v British Coal* (VWF); *Davies and Others v Secretary of State for Energy and Climate Change* (Miners Knee); *Pearce and Others v Secretary of State for Energy and Climate Change and Others* (Phurnacite); *Jones v Secretary of State for Business Energy and Industrial Strategy and Others* (Coke Workers).
- Defending a stress claim brought against an international financial institution valued over £9 million. Successful in limiting quantum and defending the most significant allegations of bullying and harassment.
- Acting on claims involving complex legal issues including the mutual hold harmless indemnity regime under which the offshore industry operates, vicarious liability for the actions of employees, and what constitutes "in the course of employment" and issues of contributory negligence.

Product Liability

- Successfully defending the groundworks contractor in a £25 million reported Court of Appeal judgment, *Aspen Insurance UK v Adana Construction Ltd*, which considered the definition of 'Product', the operation of efficacy exclusions in product liability cover, and the inter-relationship of product liability and public liability sections in a contractor's combined liability wording.
- Advising on coverage issues relating to the breakage and fall of large steel bolts from the Leadenhall Building in London.
- Advising various clients on litigation and policy coverage issues arising out of the Poly Impact Prothèses implants.
- Advising aviation insurers and their insureds in respect of a variety of products including engines, aircraft and on board products.
- Successfully acting for Markel in recovering damages from UPS caused by a defective product.
- Advising a major international car manufacturer on coverage issues in respect of numerous defective product/product recall claims.
- Advising product liability and recall insurers following contamination of food in the supply chain and advising product liability insurers on whether damage had occurred following mould growth on consumer products.
- Advising insurers in respect of a claim arising from a silent recall in the motor industry, as well as on claims concerning aviation and electrical products.
- Advising on policy validity issues under machinery breakdown covers.
- Advising a global US based manufacturer of implantable medical devices to defend a threatened group litigation.
- Advising a major US based medical devices company in respect of an alleged failure to develop and maintain a patent portfolio in respect of neuro-muscular blocking and monitoring technology.
- Defending a manufacturing business in relation to product liability, insurance and contribution claims arising from the alleged supply of dangerous products with a value of over £54 million: *Concept 70 and Others v Cape Industries and Cape Distribution Limited v Aviva*.
- Liaison with health surveillance authorities following product safety notifications and advising on remediation action.
- Advising a bedding solutions producer on product distribution supply chain and regulatory compliance.
- Advising on product safety issues associated with toys.
- Advising on product safety issues regarding electronic scooters.
- Advising on safety issues associated with glass used in shower enclosures.

- Advising foam manufacturer in respect of potentially carcinogenic chemical that entered the supply chain and was used in the manufacturing of mattresses.
- Advising food manufacturer following customer complaint regarding an allegation that glass was present in product.

Public/General Liability

- Advising on coverage and liability relating to a contractors general liability policy where heavy plant adapted for a hiree failed, causing serious injury to a third party.
- Advising a company in relation to prosecution regarding oil discharge under the OPPC Regulations.
- Advising in relation to a claim for up to £100 million under a Financial Loss extension to a contractor's annual public liability policy.
- Defending a small company where the pursuer alleged the company had produced incorrect route maps for motor sport events resulting in a crash, allegedly causing the collapse of a motorsports career and successful rental car franchise.
- Reviewing liability coverage arrangements for a leading UK based international facilities management company.
- Advising upon the wording of consumer insurance policies, including travel, death plan and credit card products, providing input on regulatory issues and drafting Key Features documents.
- Successful defence of a high value complex litigation involving an accident abroad resulting in paraplegia where damages were claimed in excess of £19 million. Contribution proceedings brought by the travel operator and were successfully resisted resulting in no payment being made by the hotelier.
- Acting on behalf of various organisations in defence of claims for injury and loss arising from data beaches under insurance arrangements.
- Defending quantum claims in excess of £1 million from multiple passengers arising from a helicopter crash.

Health and Safety

- Advising various operations in relation to health and safety prosecutions and advising clients on how to deal with witnesses and the regulatory authorities.
- Advising various operators in connection to Fatal Accident Inquiries and Coroners' Inquests.
- Advising on carrying out health and safety audits.
- Delivery training to directors and others on health and safety duties and liabilities.
- Participating in client incident response and investigations.
- Advising a major engineering company on environmental and health and safety procedures.
- Advising clients in relation to nuclear site licence issues.

- Advising on fatal accident following fall from height during demolition work.
- Advising on fatal accident, when a refuse collection vehicle reversed over a pedestrian.
- Advising on fatal accident, after maintenance worker fell from ladder.
- Advising on fatal accident, after load fell on delivery driver when he opened the back of a container on his vehicle.
- Representing a director in a health and safety prosecution following a fatality on a waste processing facility.
- Representing a director in a health and safety prosecution following a serious injury to an employee at a wood turning manufacturer's factory.
- Advising company following serious injury to employee's hand when he unblocked machinery.
- Advising company in respect of fire safety obligations following service of enforcement notice by Fire Brigade.
- Advising company on safety issues in respect of structural safety issues with building.
- Advising a petrochemical refinery following a large leak of petroleum.
- Assisting a site operator in relation to a legionella outbreak at a disused landfill.



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Construction CAR/EAR

Our well established construction insurance team provides a flexible and comprehensive service to our major insurance and construction clients, both domestically and internationally. We have extensive knowledge and expertise in advising clients on all aspects of the insurance of physical risks.

Our experience includes drafting All Risks property forms, handling complex coverage disputes and recovering claims costs by actively pursuing third parties through subrogated recovery actions. Our construction expertise spans CAR/ EAR (material damage and PL), business interruption and ALOP/DSU, machinery breakdown, construction PI and other specialist products such as force majeure insurance and bonding.

Our offices in Edinburgh, Glasgow and Aberdeen enable us to advise insurers and insureds in the construction industry on claims with a Scottish jurisdiction element, and we are able to work closely with our network of European offices to obtain local support for claims with an international element.

Our experience

- Advising contractors on liability and coverage issues in relation to a major structural design failure in retail premises in southern England.
- Acting on behalf of the project insurers of the Singapore MRT Circle Line extension, Phase 1 in respect of claims arising out of the collapse of a section of the line in April 2004. Our work included monitoring developments in an official inquiry that had been set up in Singapore, advising both generally and on coverage in light of those developments, and advising on underwriting issues relating to the policy going forward.
- Acting for insurers in respect of earthquake damage to tunnelling and a viaduct serving the Anatolian Motorway in Turkey.
- Advising in relation to claims arising from the Melbourne City Link in Australia.
- Advising on policy coverage issues relating to the Docklands Light Railway, Hong Kong International Airport and the Taiwan high speed railway.
- Drafting CAR policy wordings including a market leading insurer's combined Construct and Operate wording for PFI and PPP projects, and ancillary lenders and authority endorsements, and renewable energy wordings.
- Advising in relation to coverage issues arising out of defects in, and the failure of, wind turbines in the North Sea.
- Advising insurers in relation to claims arising out of volcano damage to a pipeline in South America.
- Advising on numerous power projects, including coverage and subrogation issues.
- Advising on coverage issues relating to the failure of road surfaces on motorway projects in various European countries.
- Advising in respect of claims arising from the Jubilee Line extension project to the London Underground.
- Advising on coverage issues arising out of the Heathrow Express tunnel collapse.
- Advising on coverage under specialist extensions to annual CAR covers.
- Advising insurers on allocation between property damage and PL/FL covers.
- Drafting a suite of combined construction and operational covers for renewable energy projects and specialist solar panel warranty covers.
- Advising on policy validity issues under machinery breakdown covers.
- Advising insurers on the operation of defects exclusions and corrosion exclusions in a range of domestic and overseas projects.
- Advising on damage to subsea cables.
- Advising on claims for water ingress to rock tunnels under CAR cover.
- Advising on machinery breakdown and business interruption losses in a coal fired power station.
- Advising on defects liability period covers for fire and flood claims.
- Advising on the indemnity and insurance provisions of contracts relating to numerous PFI, PPP and other public and private sector infrastructure projects, including defence, schools, hospitals, road and rail. We advised on the wording of the standard form of cover for the leading provider of cover to UK PFI and PPP projects and drafted ancillary model lenders and authority endorsements which were later endorsed by London Engineering Group.
- Advising on the hold harmless and insurance provisions of exploration, operating, asset construction and enhancement and other contracts in the oil and gas and energy sectors. We work closely with CMS' market leading energy practice.

— Advising on the integration into project contractual arrangements of specialist ‘one off’ insurance covers designed to support special project requirements. In the early 2000s the firm won an award for innovation for its involvement in a particular telecommunications project which included force majeure cover without a damage trigger in the suite of contract insurances. More recent examples include cover for the risk of loss of planning permission during the enhancement of a major commercial development and political risks cover against possible legislative change during the life of a project. We also advise extensively on the use of multiple classes of single project insurance in the UK and across Europe.

— Advising brokers on issues arising out of CAR, public liability and PI policies for construction industry insureds.

— Advising insurers on policy coverage issues in respect of a notification made under an Architects and Engineers Professional Liability Policy arising out of a dispute between the insured and its client relating to the provision of services and supply of goods under a Construction & Engineering Services and Material Supply Contract for a chemical process plant in Malaysia.



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Construction PI including Architects, Engineers and D&C Contractors

Our Construction PI team works closely with our Construction litigation and drafting group to provide a flexible and comprehensive service to our major Lloyd's and company market clients, both domestically and internationally, and to insureds themselves in relation to their subdeductible claims.

We have extensive experience in advising insurers and insureds on all aspects of professional risks in the construction industry. We handle complex policy disputes, defend construction professionals, draft construction PI policy wordings and deal with subrogated claims against sub-contractors and third parties. Our construction expertise spans CAR/EAR, construction PI, PFI and other specialist products such as force majeure insurance. We are able to resource claims from both our London and Bristol teams and our offices in Edinburgh, Glasgow and Aberdeen enable us to advise on claims with a Scottish jurisdiction element.

We have acted for many of the country's principal engineers, architects, quantity surveyors and project managers as well as advising on many contractors' claims arising from D&C policies. We have advised on disputes ranging from educational and health facilities to museums, sports stadia, hotel refurbishment, retail and office properties, coastal and river defences, roads, tunnels, land reclamation and residential developments, waste water treatment works, piling and drainage projects.

Our experience

Architects

- Acting for the architects in the Court of Appeal case upholding validity of Net Contribution Clauses (*West v Finlay*).
- Defending the architects of the Princess Royal Stand at Aintree Racecourse in a lengthy arbitration, including a successful appeal against award to the Technology and Construction Court.
- Acting on behalf of architects on design and inspection claims arising from the Bath Spa Millennium Project.
- Defending architect's insurers in a landmark case relating to the construction of and coverage for a collateral warranty.

Engineers

- Acting on behalf of structural engineers designing the roof and arch at the new Wembley Stadium.
- Acting on behalf of engineers on claims arising from the tunnelling works for the Melbourne City Link and the third runway at Sydney airport.
- Successfully defending at trial engineers involved in the design of Canning Town station on the Jubilee Line Extension.
- Advising engineers on claims brought by contractors for alleged delay and disruption to a major UK hospital PFI project.
- Advising engineers on claims brought for alleged deficiencies in the design of a facility for the Turin Winter Olympics.
- Acting on behalf of civil, structural, mechanical and electrical engineers in residential, office and hotel developments.

- Acting on behalf of engineers defending claims arising out of a major coastal defence system.
- Defending geotechnical engineers in respect of a ground treatment scheme at a water works site (*Costain v Haswell*).
- Advising M&E engineers in an adjudication following a hotel refurbishment.
- Defending structural engineers in relation to a claim brought by the developers of one of the largest car parks in Scotland.
- Advising M&E engineers in claims arising out of the design and construction of the Heron Tower, London.
- Defending engineers in respect of claims arising from the design of boosted water systems in high rise residential buildings (*199 Knightsbridge v WSP*).
- Pursuing proceedings in multiple jurisdictions to recover fees owed to a major consulting engineer and defending resultant counterclaim and attempted set off.
- Acting on behalf of engineers on claims arising from the tunnelling works for the Melbourne City Link and the third runway at Sydney airport.
- Advising on M&E claims arising in respect of the Aquatics Centre for the London Olympics.

Quantity surveyors

- Advising quantity surveyors on rectification of contract documents, procurement and works valuation/ contract overrun claims.
- Acting on behalf of quantity surveyors on major overvaluation and procurement claims arising out of the Regent's Quarter Project in Kings Cross.
- Advising QS/monitoring surveyors in a number of claims by banks relating to development cost overruns between 2007 and 2013.

D&C contractors

- Advising London market insurers on nine-figure 'first party' claims by D&C contractors under their PI covers.
- Defending a D&C contractor in relation to a subsiding factory which included initiating a subrogated claim against a sub-contractor.
- Acting for a D&C contractor in major disputes arising from a PFI project on Scottish Waste Water Treatment works.
- Representing a leading international contractor in relation to construction and insurance policy claims relating to the failure of wind turbines incorporating designs based on flawed international standards.
- Advising contractors in a £18 million claim arising from the design and construction of a multi level car park in the Midlands.



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Engineering contractors

- Advising London market insurers on multiple notifications made in December 2009 on various offshore projects designed by engineering contractors under EPC contracts.

Construction and project managers

- Representing (post first instance judgment) the construction managers of the Great Eastern Hotel in a £30 million claim.

Other

- Advising on PI claims arising from explosions at a chemical processing plant in India.
- Defending contractors responsible for design and construction of Europe's largest bio diesel plant.
- Advising contractors designing/installing a number of Biomass facilities across the South of England.
- Defending maintenance contractors on M&E claims in the Reading International Business Park dispute.
- Advising contractors on liability and coverage issues in relation to a major structural design failure in southern England.



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Contingency

We have extensive experience in advising on contingency claims and products for clients over the last 25 years and are one of the few firms with genuine expertise in this complex and specialist market.

We advised the successful parties in the leading reported cases on contract bonus, over redemption and film finance claims and have advised insurers on coverage and in dispute resolution processes in these contingency classes:

- Non Appearance
- Cancellation and Abandonment
- Over Redemption
- Prize Indemnity
- Contract Bonus
- Film Producers' Indemnity and E&O
- Insurance of Film Tax and Financing Schemes
- Multi-jurisdictional contingency disputes

Our Experience

Our team has experience in advising on all types of contingency claims and products.

Examples of work we have undertaken include:

- Advising insurers on coverage issues arising in claims under non-appearance policies relating to high profile opera and rock performers and other entertainers.
- Advising on coverage issues in relation to sporting and internet prize indemnity promotions.
- Advising on sport contract bonus disputes.
- Advising on over redemption and travel promotions.
- Advising on film and TV all risks claims relating to advertising and film shoots worldwide.
- Advising on film producers indemnity and E&O coverage issues.
- Advising on insurance of film tax and financing schemes.
- Advising on cancellation claim following cancellation of a rock band tour.
- Advising on issues arising from COVID-19 pandemic.



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The risk of cyber attacks and of system failures which compromise data security present an ever-growing risk for companies operating both inside and outside the technology sector. Insurers have developed a number of policies designed to protect companies against such risks. The problems of risk management, loss containment and claims management presented to insurers require immediate response, potentially over a large number of jurisdictions, particularly in cases where data protection and other authorities must by law be notified within 24 to 72 hours of discovery.

Our team has extensive knowledge and expertise in advising insurers on both contentious and non-contentious matters such as policy wordings, product development and risk management, as well as assisting insureds in responding to data security incidents including on notifications, responding to regulatory investigations and defending data litigation claims.

Our experience

- Advising insurers on coverage for claims by an offshore gaming company for business interruption and securities claims following downtime suffered as a result of a DDOS attack and ransomware attempts.
 - Providing coverage and monitoring advice in respect of numerous ransomware claims including advising insurers on whether to provide consent for a ransom, whether to decline payments on grounds of reasonableness and advising on the potential impact of sanctions on the payments of ransoms.
 - Advising a market of insurers on the insurability of a GDPR Penalty imposed following a cyber attack.
 - Providing coverage and monitoring advice to a market of insurers following significant breach response, business interruption and civil liability claims presented by an insured following ransomware attacks. This included analysis of complex business interruption claims across a global programme of policies.
 - Advising insurers on claims made under an insured's cyber policy following a ransomware attack affecting its data controller supplier, which led to direct business interruption and civil claims from its customers.
 - Advising a number of international insurance companies on the development of cyber policies across multiple jurisdictions in Europe.
 - Operating on behalf of insurers a 24/7 one hour emergency response service for insureds suffering security breaches. The facility provides speedy access to lawyers in over 75 jurisdictions through the CMS Cyber Network. Over 400 referrals since May 2014.
 - Advising an insurer in relation to a data security breach by its insured, of sensitive information held by governmental authorities.
 - Advising the German offices of international insurance companies on data protection and other regulatory and IP issues, including representation in various data breach notification cases vis-a-vis supervisory authorities.
 - Advising a major insurer and life and pensions provider on its multinational outsourcing of sales, customer relationship management and complaints handling to a leading financial services outsourcing provider.
 - Advising the Italian division of a leading global insurance company on the design and implementation of internal procedures for data protection compliance.
 - Advising insurers in respect of a multi-million pound dispute between software suppliers and users concerning alleged breaches of the contract for supply and installation of software, including advice on complex policy coverage issues.
 - Advising the French division of ATRADIUS on IT and data breach insurance policies.
 - Assisting with 'Cyber Incident Workshops' aimed at making Insureds aware of cyber risks and (through scenario planning and testing) establishing best practice policies within the workplace.
 - Advising insurers on coverage for losses arising out of social engineering frauds and IT outages.
-  Combined with a global reach and a full-service offering, the firm has helped to design new insurance products for cyber risks and is handling various complex cyber/data breach claims internationally.

Legal 500



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Defendant Personal Injury

We provide a dedicated team of personal injury specialists focussed on delivering clear advice and robust claims handling in relation to Employers and Public Liability claims. We handle the full range of personal injury matters, with particular expertise in the management of complex disease litigation, an expertise honed through acting for the defendant in what was the UK's largest group personal injury action. We recognise the value of working collaboratively with insurers and their insureds to identify and deliver innovative solutions, tailoring our service to individual clients' needs.

Our industry knowledge stretches from legacy disease claims arising from heavy industry through to cyber breach follow-on actions. Our expertise encompasses occupational stress and other forms of psychiatric injury, chronic pain and claims arising from life-changing injuries.

Incidents giving rise to personal injury claims may also result in the need for legal advice in relation to other specialisms such as health and safety/corporate criminal liability or employment law. As a team of personal injury specialists within a large corporate law firm, where necessary we are able to collaborate with a broad range of legal experts to ensure that our clients receive the best possible outcome.

Our experience

- Successfully defending the Scottish Prison Service in a personal injury action raised by an employee at first instance and appeal.
- Successfully defending a professional golfer in a personal injury action raised against him after his ball blinded a ball spotter in one eye.
- Advising in connection with an offshore gas release resulting in the prosecution of an employer (successfully defended) and multiple personal injury claims against the employer for injuries and PTSD.
- Successful defence of a vicarious liability claim brought against the prime contractor by a sub-contractors employee alleging the primary contractor had knowingly allowed a hostile work environment to develop, despite being aware of the issues on site, resulting in one of the prime contractors employees injuring the sub-contractor employee.
- Advising a major UK government department on over 1400 current legacy claims arising from the former nationalized coal industry, including the defence of injury claims through group litigation which give rise to significant reputational and expenditure risks.

- Representing the government in several high profile group actions arising from the nationalised industry including at first instance and on various appeals: *Griffiths v British Coal Corporation* (COPD); *Armstrong and Others v British Coal* (VWF); *Davies and Others V Secretary of State for Energy and Climate Change* (Miners Knee); *Pearce and Others v Secretary of State for Energy and Climate Change and Others* (Phurnacite); *Jones v Secretary of State for Business Energy and Industrial Strategy and Others* (Coke Workers).
- Successful defence of a high value complex litigation involving an accident abroad resulting in paraplegia where damages were claimed in excess of £19 million. Contribution proceedings brought by the travel operator and were successfully resisted resulting in no payment being made by the hotelier.
- Acting on behalf of various organisations in defence of claims for injury and loss arising from data beaches under insurance arrangements.
- Defending quantum claims in excess of £1 million from multiple passengers arising from a helicopter crash.
- Defending a claim by an employee who was injured at work, when a number of tyres fell from a vehicle onto him, causing him significant life changing injuries. The claim was successfully defended on issues of causation and quantum.
- Representing an international outsourcing client in connection with multiple claims for injury arising out of its provision of medical examination services to the UK government giving rise to significant reputational issues for the service provider.
- Successful defence of a high value complex litigation involving an accident abroad resulting in paraplegia where damages were claimed in excess of £19 million. Contribution proceedings brought by the travel operator and were successfully resisted resulting in no payment being made by the hotelier.
- Acting on behalf of various organisations in defence of claims for injury and loss arising from data beaches under insurance arrangements.
- Successfully advising the insurers of a group travel cover in respect of a claim before the FOS concerning cancellation of a holiday due to Zika virus including issues of whether pregnancy fell within the definition of “illness” in the policy.
- Acting in a substantial number of multi-million dollar personal accident reinsurance disputes including those relating to PA LMX Spirals and to Unicover retrocessional business.



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Directors' and Officers' Liability

We are able to offer our expertise and solutions for matters ranging from high profile, and sometimes multi-jurisdictional, claims in which reputations, livelihoods and even liberty may be at stake, all the way through to smaller, lower quantum matters in which the priority may be cost-effective containment.

We defend directors, whether insured or otherwise, in commercial disputes, DBIS and regulatory proceedings.

As a full service law firm we are able to call upon specialist colleagues in fields such as employment, insolvency and competition and our CMS network expands our capabilities to Europe and beyond.

Our experience

- Acting for an FSA regulated company and its CEO in defending an FSA enforcement action in respect of governance and systems and controls weaknesses.
- Advising in respect of a lengthy SFO investigation relating to allegations of corruption and bribery against a company and its officers, spanning a number of territories and involving several overseas investigative authorities.
- Advising in relation to directors' disqualification proceedings brought against the directors of an insolvent company following a high-profile corporate collapse, and in respect of an earlier DTI investigation and a claim by the company's liquidator.
- Acting for 10 former directors and employees of Safeway in connection with claims brought against them by Safeway relating to a penalty under the Competition Act 1998.
- Conducting the defence of two directors who face a breach of fiduciary duty claim and unfair prejudice proceedings from a former director and minority shareholder.
- Conducting the defence of three directors in a claim by liquidators alleging breach of duty and wrongful trading under ss. 212 & 214 of the Insolvency Act.
- Representing the former finance director of a listed accountancy firm throughout a lengthy investigation and disciplinary process conducted by the Financial Reporting Council.
- Advising former directors of a UK technology company in connection with issues arising on the company entering financial difficulty.
- Advising insurers on coverage for civil and shareholder claims and disqualification and criminal proceedings against directors arising out of the bankruptcy of a large Italian company.

- Advising insurers on coverage for US regulatory investigations against directors and senior managers of a pharmaceutical company producing and selling opioids.
- Advising insurances on coverage for Serious Fraud Office criminal proceedings and Insolvency Service disqualification proceedings against the directors of a listed oil company.
- Advising on policy coverage in respect of a US\$530 million claim by investors asserting fraud and asset stripping.
- Defending the former directors of a charity against claims of wrongful trading by the charity's liquidator.



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Education

We have experience in assisting schools of different types and their insurers when they are faced with claims by parents or pupils relating to the treatment of the child by the school. This can cover issues relating to admission decisions, alleged discrimination, disciplinary issues including exclusion of the pupil from the school, confidentiality issues in cases of alleged abuse, and various allegations that the school has failed in its duty to protect children from bullying or to identify signs of possible underlying medical causes for behavioural problems

Our team ensures that the legal ramifications of each claim are fully understood by the schools and the parents, but is also mindful that there are generally strong emotive issues involved on all sides that require careful handling. Complaints against schools are often not primarily about financial compensation, but also about obtaining recognition of unfair treatment or assurances with respect to the school's future approach to issues associated with particular children. We aim to be sensitive to the underlying objectives of all parties involved, including the paramount objective of settling matters in the best interests of the children. We therefore aim to direct complaints through the school's internal processes or a negotiated or mediated settlement, rather than through the tribunals or courts.

Because neither parents nor teachers are generally used to claims, we often act as a guide through the process and a facilitator in settlement discussions, as well as providing, together with specialist education counsel, the required legal advice.

Our experience

- Defending schools against claims of disability discrimination brought to the SENDIST tribunal.
- Defending schools against allegations that admission or examination arrangements discriminated against a disabled child.
- Assisting schools in dealing with threatened action following a pupil's exclusion.
- Advising a school on its response to an allegation that it failed to prevent bullying.
- Advising a school on its response to allegations of racial discrimination by a teacher.
- Advising an independent school on applicability of force majeure clause in parent-teacher contract in event of COVID-19 closure.
- Advising organisation on its responsibility for historic sexual abuse on school premises.
- Advising schools following inadvertent Data Protection Act breaches.
- Advising school on rights and duties where pupils' parents separate acrimoniously.



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Energy

We have the strength and depth to undertake successfully the largest power sector and oil and gas matters worldwide and, as a leading energy practice, we are recognised for our expertise in the development of power projects.

Our expertise in energy insurance claims is uniquely enhanced by our knowledge of the energy industry. Our specialist team has an unrivalled understanding of the exposure to risk and risk liability sharing agreements commonly adopted in projects in this field. CMS' Oil and Gas team has extensive international reach and our practice includes both contentious and non-contentious work.

Our experience

- Advising on available insurance coverage to indemnify loss and expense incurred following damage to a gas field pipeline off the coast of New Zealand.
- Successfully representing a leading Lloyd's Syndicate in an arbitration with its reinsured under an Energy Excess of Loss reinsurance programme concerning aggregation of claims arising from defective paintwork on rigs forming part of the Sable Offshore Energy Project.
- Representing a major reinsurer in an arbitration concerning retrocessional OIMLW claims arising from the Maersk Gryphon A FPSO loss.
- Being instructed by Total's liability insurers to advise on strategy in relation to the joint venture party liability dispute and third party liability claims arising out of the Buncefield Oil Depot explosion.
- Successfully representing Aon (at first instance and in the Court of Appeal) in defending allegations of breach of contract/negligence made against Aon in connection with its placement of the reinsurance of an energy cover (the so-called '*77 Energy Cover litigation*', which attracted high publicity in the insurance sector).
- Advising in ICC arbitration against a West African Government in relation to offshore oil and gas exploration rights valued in excess of US\$1.5 billion.
- Engaged by Lloyd's underwriters in respect of a complex dispute arising out of the construction and performance of a CAN\$6 billion plus on-shore energy project.
- Advising in relation to a day-rates claim of approx. CAN\$40 million in relation to the hire of a drilling rig offshore North America.
- Advising a reinsurer of the captive insurer of a large energy provider on a subrogated claim against its contractor in Poland.
- Advising on numerous international insurance/reinsurance power plant claims spanning the Philippines, Thailand, Costa Rica, Guatemala and Chile, and including one loss of \$100 million.

- Advising reinsurers on coverage concerning a US\$50 million fire at a petrochemical complex in Brazil.
- Advising a captive in connection with well blow out losses in Iraq.
- Advising on policy coverage for US\$35 million+ in claims arising from damage to the mooring legs of an FPSO off New Zealand.
- Acting for the insurers of Exxon Corp. under their General Catastrophe Excess (GCE) policy in relation to the \$2 billion claim arising out of the grounding of the Exxon Valdez and clean-up of the oil spill and liability claims and recovery from reinsurers (*King v Brandywine Re*).
- Acting for insurers in subrogation proceedings against the owners of the Piper Alpha platform for property damage and liability claims arising out of the loss of the Piper Alpha platform.
- Representing insurers in arbitration proceedings in relation to the explosion at the Total Final Elf Toulouse Refinery loss and the Petrobas P36 rig loss including issues relating to OLW triggers.
- Acting for insurers of the Hibernia platform in relation to claims brought against their facultative reinsurers.
- Acting for the Umbrella Liability insurers of BP, ARCO and members of the Alyeska Pipeline Consortium in relation to the grounding of the Exxon Valdez, property, clean up and compensation liability claims arising from the oil spill and subsequent recoveries from reinsurers.
- Advising reinsurers in respect of complex elemental/non-elemental causation issues to recover significant losses arising out of physical damage and LOPI to an FPSO owner/operator.
- Advising reinsurers upon the applicability of the Refinery Exclusion Clause in the JELC wording in relation to claims brought by cedents arising out of an explosion at a refinery.
- Advising a North Sea contractor in relation to claims and counterclaims totalling £20 million arising from the construction of an FPSO.



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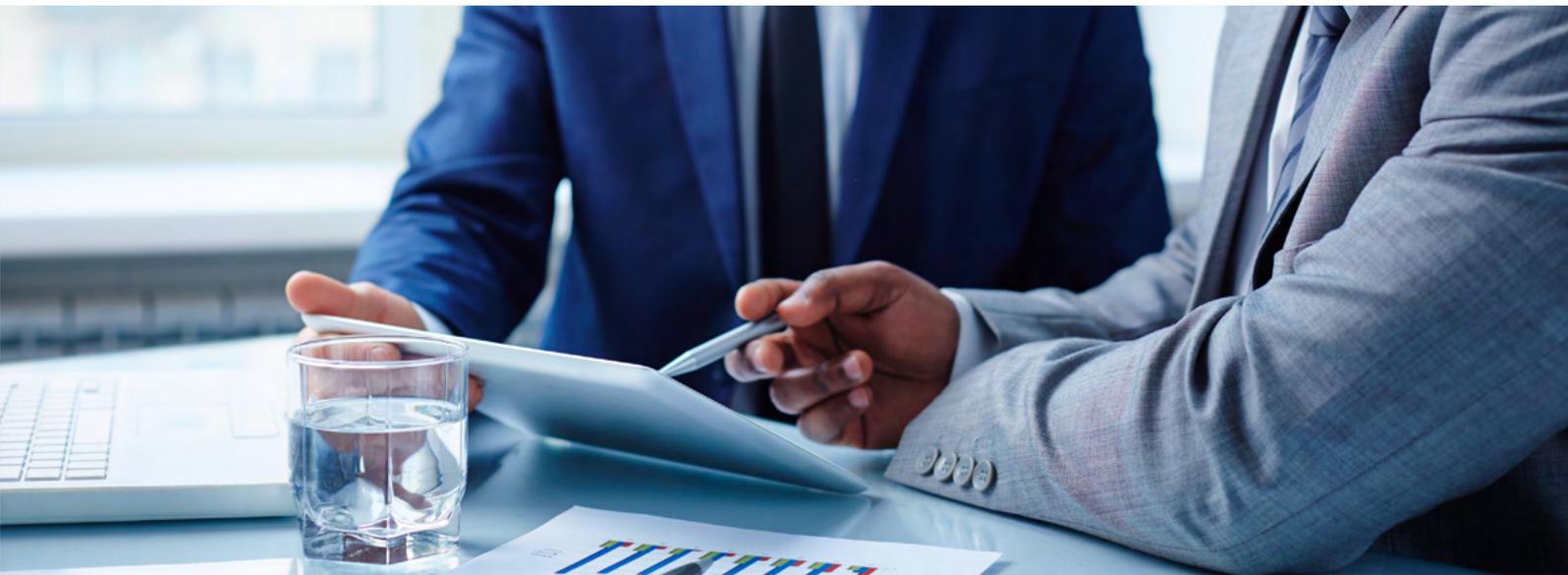
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Clients benefit from the firm's international footprint and ability to advise on complex multi-jurisdictional disputes.

Chambers & Partners



Financial Advisors

Our team is recognised as being at the forefront of assisting financial advisers and their insurers with complaints, claims and contentious regulatory issues. We have been involved in this field for many years and enjoy an excellent reputation for our work.

Our expertise is based in both Bristol and London and therefore we are able to adopt a flexible approach so as to ensure creative and cost effective solutions.

Our experience

Investment products

We have advised firms and defended claims arising from all of the major mis-selling scandals and regulatory investigations over the last 15 years. For example:

- We have dealt with claims involving the recent failure of various investment funds.
- We have been extensively involved with reviews of structured product sales, assisting with the creation of appropriate review methodologies and assessment of sales. We have liaised with both the FCA and FOS to ensure satisfactory outcomes for the regulated firms and their insurers.
- We have advised firms and insurers in relation to (geared) traded endowment and life policies.
- We regularly advise on claims in respect of investment bonds (including off-shore bonds) of all kinds.
- Advising insurers on coverage for claims against a listed investment manager concerning allegedly corrupt activity by the investment manager's intermediaries in the Middle East and North Africa.
- Defending large-scale, multiple-investor recovery actions by the FSCS following the closure of regulated firms.

- We have dealt with a series of related complaints to the Financial Ombudsman Service regarding providing advice solely on a SIPP, making appropriate submissions regarding redress and taking jurisdictional points with the FOS as appropriate.
- Our extensive experience of film finance type tax schemes, including the technical and limitation issues associated with them, means we have defended a number of claims against IFAs to successful conclusion, in correspondence and at mediation.
- We have provided advice and advocacy on the full range of investment products: life settlements, lifetime mortgages, EIS, UCIS and more.

Pensions

- We can boast one of the most experienced teams of solicitors in the country dealing with disputes involving pensions.
- We regularly act for pension trustees, administrators, fund managers, investment advisers and actuaries.
- In the context of claims against IFAs, we have advised on a significant number of claims regarding transfers from occupational pensions to private ones.

We have advised insurers on the appropriate approach to multiple claims and liaised with the regulator regarding how a potentially systemic issue should be assessed.

- Our experience spans all aspects of pensions, including problems with their creation, administration, tax status, management, investment allocation, transfer, withdrawal, drawdown, benefit availability and selection, annuity purchase and wind-up. We deal with claims involving PPPs, SPPs, SSASs and occupational schemes of all kinds. Indicatively, we resolved a long-standing issue for a SSAS provider with HMRC involving an alleged liability under the Finance Act 2004. We also have extensive experience of issues relating to the lifetime allowance to pension schemes from 'A Day' onwards.
- We resolve disputes brought to TPAS, POS, and by way of civil claims.

Fraud

- We have been involved in many adviser frauds and dealt with action groups of affected investors as well as 'push payment' frauds where IFAs have been accused of facilitating fraud.
- We have also secured recoveries from innocent promoters of fraudulent investment schemes.

Fund management and investment strategy

- We frequently advise on claims arising from allegations of negligent fund management and investment portfolio advice, both as standalone issues and as part of related claims (such as pensions advice).
- Advising insurers in respect of claims arising in connection with losses suffered by with-profits funds as a result of 'cherry picking' by traders at an



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investment manager.

- Advising insurers in respect of a claim against the fund management arm of a bank for making investments in breach of investment guidelines.

Regulatory

- We have extensive experience in assisting regulated firms in dealing with the FCA, both with regard to generic issues (such as treating customers fairly) and specific problems (such as sales of structured products and client money regulation). Whilst we work hard to avoid matters being referred to enforcement proceedings, we do have experience of assisting should the need arise.
- We frequently advise on dealing with complaints under the DISP rules in order to maximise the prospects of successfully defending the complaint (or minimising redress due) before the FOS.
- We regularly advise on the scope of the FOS' jurisdiction and the extent to which decisions are binding and lawful.

Claims management and dispute resolution

- Where complaints progress beyond (or outside of) the FOS, we are uniquely positioned to provide expert advice on technical financial services issues, litigation and dispute management strategy.
- Our combined understanding of professional negligence claims and the financial services industry enables us quickly to identify areas of strength and weakness in claims and greatly assists in minimising any settlement payments necessary by identifying causation and loss arguments.
- We regularly use mediation as a method of achieving swift and cost effective resolution of claims.
- Advised on recovery actions where multiple parties involved in investment/inheritance strategy.



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Fine Art, Specie and Jewellers' Block

Our dedicated jewellers' block and fine art team has many years' experience advising and acting for clients in this specialist area. CMS' global reach means that we have the expertise to advise on claims both in the UK and with an international dimension.

Our experience

- Acting in numerous international fine art and jewellers claims, including in the USA, Brazil, Italy, France, Hong Kong and South Korea.
- Advising on recovery issues arising from the Hatton Garden robbery in 2015 where multiple insureds were affected.
- Acted for insurance market in *Sanger v Beazley* a Commercial Court decision concerning the effect of unattended vehicle exclusion.
- Advising on fine art claims with values in excess of \$10 million.
- Dealing with recovery issues for insurer arising from UK riots in 2011, including a large loss at Albermarle & Bond shop which burnt to the ground.
- Advising on thefts of high value classic cars and recovery issues.
- Representing the liability insurers of a logistics company being pursued for damages for having shipped ivory pieces bought at auction that did not have the necessary CITES certificate before departure from the USA, leading to the confiscation of the pieces on arrival in Hong Kong.
- Acting for various logistics companies being pursued for damage to works of art caused in the course of transporting the works of art either to their buyer in Hong Kong or to/from exhibitions.



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Healthcare, Medical Negligence and Lifesciences

In conjunction with our life sciences regulatory colleagues, the insurance and reinsurance group at CMS represents a range of clients in the lifesciences and healthcare industries along with their insurers. As a team we have experience of dealing with the full range of issues and claims including:

- Product and public liability claims
- Health and safety regulations
- Medical, clinical and professional negligence disputes
- Litigation friend and court of protection work
- Public inquiries, inquests and prosecutions

We have also advised healthcare providers in defence of more general negligence claims and we are regularly instructed by insurers to defend major cases, including catastrophic personal injury claims.

We can deal with claims both before and after litigation commences, identifying the best strategy to bring about a cost effective solution. In addition to our dispute resolution expertise, we have extensive experience of working with insurers and insureds in the public and private healthcare sector and advising on coverage and policy issues in this area.

Our experience

High profile matters

- Poly Impact Prothèse issues
- MMR vaccines litigation
- Organophosphate chemical exposure litigation
- Legionnaires' disease claims
- Litigation regarding negligent surgeon Mr Ian Paterson

Medical Devices

- Advising various clients on litigation and coverage issues arising out of the Poly Impact Prothèse implants, having been instructed by medical professionals and a major healthcare provider.
- Advising a global US-based manufacturer of implantable medical devices to defend a threatened Group Litigation Order by a group of almost 30 claimants following a medical device alert.
- Advising a leading life sciences company on product liability litigation (a potential group action) relating to a hip implant.

- Advising a major US based medical device company on a potential third party claim for compensation in respect of an alleged failure to develop and maintain a patent portfolio in respect of neuro muscular blocking and monitoring technology.
- Advising a major US medical devices manufacturer in product liability litigation resulting from recalls of implantables in the UK and Europe.
- Advising on claims arising from a product liability matter involving a machine malfunction resulting in false negatives being given to patients.
- Advising the producer of implantable cardioverter defibrillator leads alleged to have fractured, causing physical injury and consequential loss, or to have an unacceptably high risk of fracture necessitating replacement surgery and consequent physical injury and loss.

Diagnosics and treatment

- Advising a testing laboratory in defence of wrongful birth claims where a child has Beta Thalassaemia (*Farraj v King's Hospital*) involving complex factual and expert issues concerning the culture and testing of CVS and a duty to communicate between an NHS Trust Hospital and a private laboratory.
- Acting for a GP and his insurers in relation to the defence of a claim for psychological injury arising out of the delay in diagnosis and wrongful birth of two children suffering from sickle cell anaemia.



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- Defending a chiropractor and his insurers in relation to the defence of a claim for physical injury caused by alleged negligent treatment.
- Advising a regulator body and its members in relation to an alleged delay in the diagnosis of breast and lung cancer.

Pharmaceutical and testing

- Advising a research based healthcare company in a very significant ICC arbitration concerning the withdrawal of an antibiotic product.
- Advising a hospital in relation to the misrepresentation of test results, advising a testing laboratory on procedure risk, on claims arising out of erroneous test results and the securing of an indemnity from product suppliers.
- Advising on issues relating to sexual abuse investigations by the police arising from a positive chlamydia test on a child.
- Advising on claims arising from breach of confidence concerning paternity testing.
- Advising on potential claims arising from the miscommunication of DNA test results.



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Insurance Brokers

Our dedicated brokers' professional indemnity team has extensive experience and unparalleled expertise in acting for, advising and defending domestic and international brokers and their insurers. Our track record includes many of the landmark brokers' claims and we are consistently praised by our clients for the quality of service, our commercial and legal expertise and the care that our team provides.

Our expertise extends beyond professional negligence issues to include advising on the full range of legal issues faced by brokers including corporate, regulatory, employee benefits, employment, tax and general commercial issues.

A number of our brokers' team have worked at insurance broking houses and so have first-hand understanding of the business of insurance broking and the issues that brokers face. The brokers' team has both the legal expertise and the industry knowledge to deliver cost effective commercial solutions and we are continuously at the forefront of advising on brokers' concerns.

Our geographical spread allows us to provide a seamless service across over 40 jurisdictions, ensuring flexible and cost effective solutions and providing a competitive edge against niche insurance practices.

We are the authors of the leading legal textbook on this area, *Insurance Broking Practice and the Law*.

Our experience

- Defending a leading broking house in a \$488 million negligence claim against a number of London market underwriters and the brokers who wrote and placed an all risks policy into the specie market.
- Defending an independent commercial broker in the 2010 case of *Jones v Environcom* and the subsequent appeal in 2011.
- Successfully defending allegations of breach of contract and/or negligence made against a major insurance broker in connection with the so-called '77 *Energy Cover*' litigation.
- Advising a leading global insurance broker in relation to a claim by an infrastructure operating company on its property damage/business interruption insurance arising out of the closure of a major transport route.
- Acting in a large brokers' case involving allegations of conspiracy to defraud clients arising from involvement in the PA spiral.
- Acting in relation to a claim for failure to procure insurance coverage. The claim arose out of market issues and a previous confidential market settlement. The subject matter of the claim had a Bermudian element and was related to the *Syndicate 957/ Feasey litigation*.
- Advising a leading broker and their E&O insurers in relation to potential liability arising out of placement of insurance for an IVF clinic.
- Acting for a leading broker and their E&O insurers in relation to a potential liability arising out of the placement of a combined PI, D&O and Crime Policy for an investment fund.
- Advising an international broker in a claim arising out of the rupture of an oil pipeline in South America that caused over \$50 million of loss to the insured.
- Defending a major broker in respect of a facultative energy reinsurance placement following losses in the Gulf of Mexico caused by Hurricane Rita.
- Acting for an international broker in respect of issues on an aviation placement arising out of a fatal plane crash in Brazil.
- Defending claims brought against brokers by the provisional liquidators of the Independent Insurance Company Limited for return of commissions.
- Defending a number of brokers in respect of regulatory proceedings and advising brokers on regulatory matters.
- Advising in relation to reported cases that have become important precedents on significant issues including *Gan v Tai Ping*, *Arig v Generali* and *Mander v CGU*.
- Conducting arbitration for Lloyd's broker in €7 million brokerage dispute with Bermuda reinsurance broker.
- Acting for a leading broker and their E&O insurers in proceedings relating to the placement of a CAR policy in Northern Ireland.
- Acting for a leading broker and their E&O insurers in relation to various pre-litigation complaints and disputes, including solicitors' PI, reinsurance, fraud, premium and notification issues.



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Particular expertise in disputes involving
brokers' negligence.

Legal 500

Marine

CMS' highly experienced marine insurance team acts for Lloyd's syndicates, London market and international corporate insurers and reinsurers, International Group and fixed premium P&I insurers, as well as clients across the shipping and logistics sector, including shipowners, operators, freight forwarders, traders, port and terminal operators, banks and financial leasing companies. We have the legal expertise and industry knowledge to support our clients' needs around the globe. Our clients trust us to deal with their high-value, complex multi-jurisdictional matters in a pragmatic, efficient and commercial way.

We handle work across the full range of marine insurance business lines, including:

- Cargo, goods in transit, project cargo and DSU
- Marine Hull and Machinery and additional insurances, including increased value, mortgagee's interest, loss of hire, and builder's risks
- Marine and excess liabilities, including charterers' liability, freight services liability, marine professionals, marine trades, ports and terminals, shiprepairers' liability
- P&I
- Marine War, including piracy, detention, seizure/confiscation, malicious damage
- Yachts and pleasure craft
- Marine Cyber
- Trade Credit and Political Risk

We deal with everything from clear English policy drafting and claims audits to marine casualty work, including claims arising from collisions, groundings, salvage and General Average, defence of third party claims for property damage, financial loss and personal injury, subrogated recoveries, claims under bills of lading, charterparties and other contracts of carriage, brokerage and brokers' liability, shipbuilding, repair, financing, shipmanagement and sale disputes, international arbitration, jurisdictional disputes and the recognition and enforcement of judgments and awards.

Members of the team have been involved with claims arising from many high-profile maritime incidents over the years including PRESTIGE, MOL COMFORT, MAERSK HONAM, EVER GIVEN.

We have probably the busiest ship arrest practice in Hong Kong, with experience of arrests and release of vessels, including negotiating security guarantees and bail bonds, as well as taking action to obtain security for claims in many other jurisdictions via arrest or similar proceedings.

Examples of our experience

Cargo

- Acting for cargo interests with claims of over \$18.8 million in Hong Kong Court proceedings arising out of the collision between 'ELENI' and 'HEUNG-A DRAGON'.
- Acting for US cargo insurers in successful defence of claims for contributions in General Average following a ship grounding in the Suez Canal.
- Successful subrogated recovery action for cargo insurers in LMAA arbitration following appeal against default arbitration award/grant of injunctive relief.
- Acting for reinsurers in respect of a through transit stock policy, including issues of misrepresentation and material non-disclosure by the cedent insurer and its broker relating to a fire at the assured premises in Indonesia with losses of over \$3 million.
- Acting for insurers on coverage issues relating to theft of mobile phones in a Mexican warehouse involving losses of \$3 million.

- Handling LOF salvage arbitration and successful recovery for UAE cargo insurers of salvage contributions and defence of claims in General Average of chemical cargo following loss of the vessel's rudder due to negligent ship repairs.

Hull

- Advising London market Mortgagee's Interest insurers on defence of \$85 million claim coverage dispute for following rejection of CTL claim by H&M insurers.
- Advising overseas market H&M insurers on coverage issues under Insurance Act 2015 in relation to ATL claim following fire and sinking of fish factory vessel.
- Acting for London market H&M insurers in connection with coverage and recourse claims arising out of tank coating damage to a fleet of tankers.
- LOF salvage arbitration for Owners/hull insurers of salvage claim following main engine breakdown and towage.

- Advising London market H&M insurers in connection with property damage and liability claims arising out of collisions at anchorage involving 5 vessels.
- Coverage advice and settlement of claims for engine damage and LOH following a steam turbine breakdown on board a gas carrier.
- Advising overseas market H&M insurers on potential subrogation recoveries against hydrographic office and vessel charterers following grounding of vessel on an uncharted obstruction in polar waters.
- Advising H&M insurers on recourse claim against port operator for repair costs and loss of hire following vessel grounding within port area following shift of navigable channel.
- Advising P&I insurers on coverage and defence of claims arising out of detention of vessel for alleged carriage of arms in breach of EU sanctions.
- Acting for P&I insurers in recourse claims for misrepresentation and non-disclosure against assured owners and managers to recover sums paid out to third parties following the total loss of a laden vessel.
- Representing P&I Club and its chartering members in connection with London arbitration of unsafe port and other claims following the grounding of a bulk carrier.

Liability

- Acting for port liability insurers in successful defence of claims arising following the grounding of a laden cargo vessel whilst under compulsory pilotage
- Acting for insurers of an international freight forwarder with over 100 shipments on board 'MAERSK HONAM' in relation to complex General Average, salvage and PA issues arising out of the casualty.
- Advising numerous freight forwarder and NVOCC interests in connection with defence of claims arising out of the total loss of a large container vessel and recourse rights against shipowners and shipbuilders including issues of limitation of liability.
- Acting for classification society insured and London market liability insurers in connection with defence of pollution liability recourse claims (exceeding \$1 billion) and ancillary matters arising out of the sinking of an oil tanker.
- Advising liability insurers and their insureds in connection with various warehouse fires in Taiwan, India, Middle East and USA (including one involving calcium hypochlorite cargo).
- Claims audits of marine liability and specialist PI underwriting and claims agencies on behalf of principals, to include making recommendations regarding case handling.
- Drafting policy wording for marine trades insurers.

P&I

- Acting for P&I Club and its chartering member in relation to its liabilities in respect of the sinking of a bulk carrier including loss of the vessel, crew and cargo on board with the total claims amounting to \$70 million.
- Advising underwriters of a P&I mutual managers liability policy on coverage and defence issues.
- Advising a tanker pool operator and their insurers in a dispute between two sovereign states over ownership of an oil cargo.
- Representing shipowners and their P&I Club in dealing with an abandoned cargo on board, including obtaining orders relating to discharge, exercise of a lien and disposal as well as obtaining a declaration from the court that owners had acted lawfully.

Marine War

- Advising Lloyd's market war risks underwriters on coverage and defence of \$25 million ATL/CTL claim following detention of vessel for alleged oil smuggling.
- Acting for local cedant and London market reinsurers in defence of Commercial Court proceedings for the alleged CTL of a tanker following detonation of an explosive device next to the vessel while at anchor off Fujairah.
- Advising London market insurers on coverage, including breaches of warranty, in respect of the detention of a vessel in Venezuela following the imposition of US sanctions.
- Acting in successful mediation of war risks insurance CTL claim following prolonged detention of vessel under sanctions powers.
- Coverage advice to insurers on disputed \$5 million claim for total loss of vessel which sank shortly after being released from seizure by pirates.

Yachts

- Advising megayacht insurers in connection with coverage and litigation of recourse claims against yacht builders and equipment suppliers following a dismasting.
- Conducting ICC arbitration of recourse claim against negligent ship repairer following damage to superyacht propellers following routine maintenance.
- Coverage advice under Nordic Plan in relation to damage caused by latent defects in yacht's FW piping system.
- Acting for insurers in disputed CTL claim following grounding of a superyacht.
- Advising European insurers in connection with common law salvage claims following the salvage of a yacht in Italy.

Marine Property/Trade Credit/Cyber

- Acting for insurers of port and terminal operators on recoveries against shipowners arising out of allisions with berths and shore cranes in numerous different jurisdictions including Croatia, UAE, Hong Kong, Australia, South Africa, Pakistan, Egypt, Indonesia, Thailand and the Philippines.
- Acting for shipbrokers and their insurers in respect of cyber breaches, in particular cases of fraudulent diversion of payments.
- Coverage advice to primary and excess layer insurers of \$50 million claims by container lessors arising out of the collapse of Hanjin.
- Advising ports and terminals insurers on coverage for £40 million alleged storm damage to port structures.
- Advice to trade credit insurers on marine aspects of ad hoc arbitration of export credit disputes/recourse action against a state oil company in connection with construction of an FSO Unit.
- Drafting new terrorism BI coverage wording for London market political risk insurers.



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Reinsurance

- Advising continental reinsurers in relation to a dispute with its cedent involving the presentation of casino barge losses arising from Hurricane Katrina.
- Defending a market of international marine reinsurers in a coverage dispute with a captive insurer over multi-million euro fines levied or the importation of silicon into the EU.

Energy

- Advice to insurers of jack-up rig on potential recourse claims of \$100 million+ following CTL due to a punch-through.
- Advising property insurers of an energy terminal on \$15 million recourse claims following vessel collision with another vessel damaging a loading.



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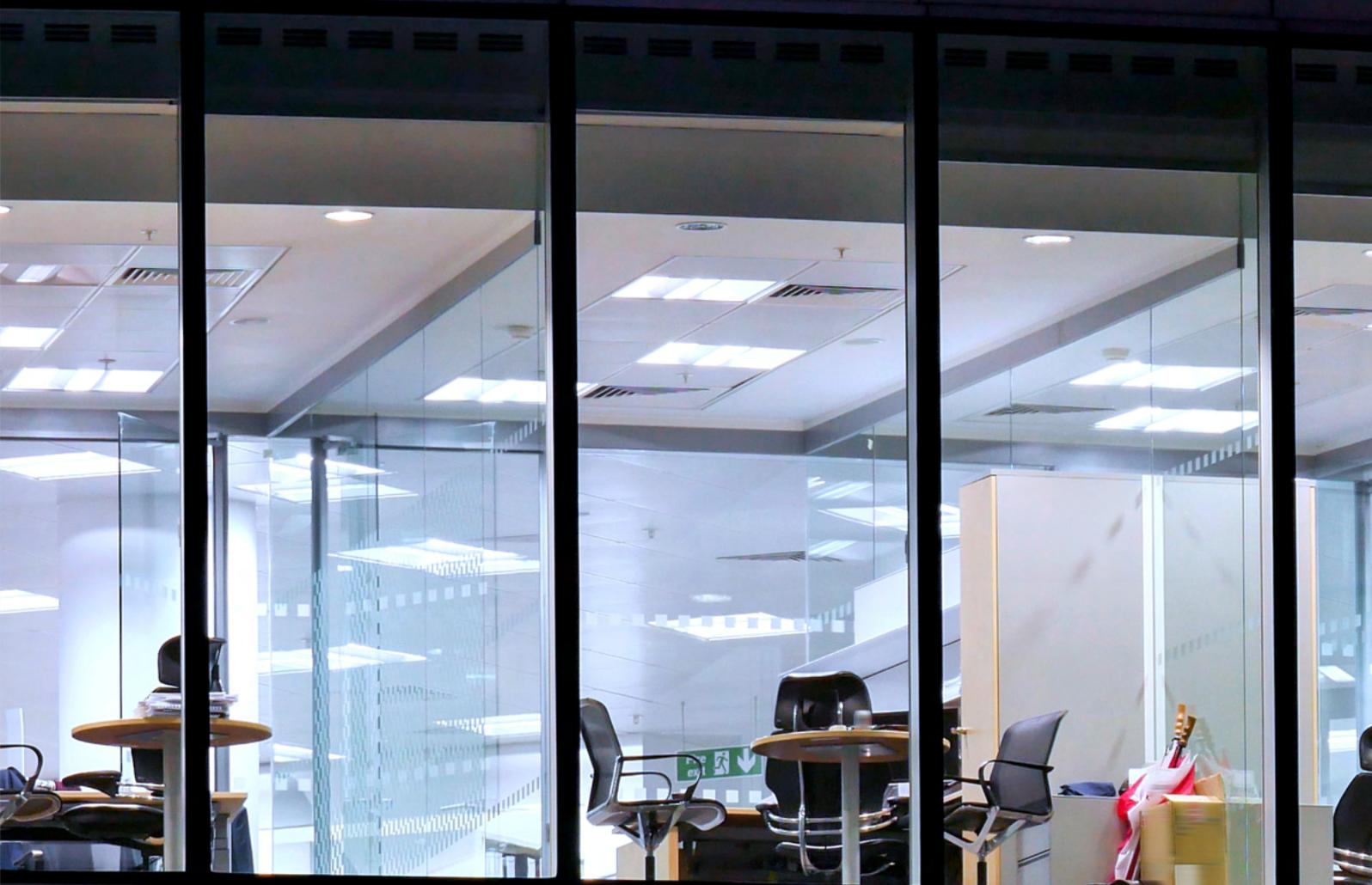


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Pension Professionals

CMS' specialist pension professionals' team handles a large number of claims of all sizes involving alleged professional negligence by pension administrators and actuaries. A number of our team have worked within the in-house legal teams of leading pension services providers and so have first-hand understanding of the day to day issues that pension professionals face.

Our extensive experience includes advising on disputes arising from the creation, administration, tax status, management, investment allocation, transfer, withdrawal, drawdown, benefit availability and selection, annuity purchase and wind-up of pension schemes. We deal with claims involving PPPs, SIPP, SSASs and occupational schemes of all kinds, including:

- Defending claims made against administrators, consultants, actuaries and trustees for alleged professional negligence in the day to day running, administration and operation of pension schemes including issues concerning equalisation and transfer from defined benefit schemes to defined contribution schemes.
- Advising on the recoverability of overpayments and resolution of underpayment claims.
- Advising on issues concerning Pension Protection Fund levies.
- Handling issues relating to work place insurance schemes including private medical and death in service.
- Advising on the taxation consequences of unauthorised transactions including advising on whether an unauthorised payment has been made from a pension and the accompanying tax consequences.

We are experienced in handling proceedings and issues before the court, the Pensions Ombudsmen Service, the Pensions Advisory Service, the Pension Protection Fund and the Financial Ombudsman Service as well as dealing with tax issues raised by HMRC. Where appropriate, we work closely with our leading pensions and tax practices.

We are also experienced in advising pension professionals in relation to acquisitions including assisting with due diligence exercises.

Our experience

Administrators and Consultants

- Advising a leading pensions administrator, consultant and actuary in respect of a number of claims made against it for alleged maladministration and inaccurate actuarial advice including issues relating to equalisation, over and under payments, taxation consequences and PPF levies.
- Defending a leading pension administrator and benefit consultant in respect of a claim relating to equalisation and scheme closure.
- Advising on the unauthorised payment regime and dealing with reports to HMRC.
- Advising pensions administrators re transfer of defined benefits v defined contribution schemes.
- Advising on a potential claim against a pension administrator in relation to the failure to obtain death in service insurance for employees.
- Defending pension fund operators against allegations that they dealt with unauthorised overseas intermediaries.
- Appealing on pension fund operator's behalf against HMRC scheme surcharge levies.

Trustees

- Advising trustees on exercise of their discretion under trust deed and rules, including distribution of pension fund on member's death.
- Defending multiple complaints at The Pensions Ombudsman Service regarding overpayment, distress, delay in decision making. Also dealing with TPAS and informal mediations.



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SIPP providers

- Acting for a major SIPP/ SASS provider dealing with complaints and claims arising out of its role as trustee and administrator.
- Advising on a SIPP provider's alleged failure to undertake due diligence in relation to investments (with particular experience regarding UCIS and esoteric investments).
- Handling complaints against professional SIPP trustees arising out of transactions within SIPPs. Includes advising on HMRC enquiries regarding Relief at Source and investments for SIPPs such as Elysian Fuels.
- Defending pension fund operators against allegations that they failed to prevent SIPP investments that were unsuitable for the investor.

Actuaries

- Representing a scheme appointed actuary and its insurers concerning an alleged failure to amend a trust deed to take account of equalisation.
- Successfully opposed the judicial review of a pension fund valuation against the scheme appointed actuary.

Employee Benefit Insurances

- Advising on issues relating to the death in service of a key man employee where the insurer had declined cover.
- Advising a global organisation on its private medical insurance arrangements.



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Policy Drafting and Contract Documentation

Our team has extensive knowledge and expertise in advising insurers on policy wordings, product development and risk management. We understand the insurance market and how it operates and have an excellent understanding of the issues faced.

We regularly advise on delegated underwriting authorities (including insurer relationships, broker issues, claims handling and litigation), terms of business agreements, service level agreements, broker transfers as well as other issues arising from coverholder arrangements.

As well as dealing with non-contentious aspects, such as negotiating the agreements, our team specialises in dealing with contentious and regulatory issues arising from insurance contractual arrangements including making/defending claims arising out of breach of authority under delegated underwriting authorities, FOS complaints and regulation (both Lloyd's and FCA).

As part of a full service law firm, we are able to call on specialist support from market leading colleagues across a range of disciplines including tax, pensions, competition, data protection, financial services regulation, employment, corporate, banking and international finance, construction, energy and projects, real estate, planning, environmental and health and safety.

Our experience

- Reviewing liability and material damage covers for compliance with Insurance Act 2015.
- Drafting and updating terms of business agreements for a number of high profile brokers including updating the agreements for compliance with the Insurance Act 2015.
- Reviewing insurer's UK liability policy wordings for compliance with Insurance Act 2015.
- Advising a major insurer in respect of their Insurance Act project, including designing and presenting their internal training programme, updating their wordings and providing ad hoc Insurance Act related advice.
- Architect of ReWord database of reinsurance clauses, a comprehensive, quantitative and interactive database of market and client-specific reinsurance clauses, which won the British Insurance Award for Technology in 2009.
- Pioneer of automated online checks for treaty reinsurance wordings, which won the British Legal Award for Innovation in 2015.
- Advising on collateralised reinsurance agreements and related trusts.
- Drafting CAR policy wordings including a market leading insurer's combined Construct and Operate wording for PFI and PPP projects, and ancillary lenders and authority endorsements, and renewable energy wordings.
- Drafting new design and construct PI wording for London insurer.
- Drafting global programme for engineering contractor.
- Drafting broad basis delay in start up cover.
- Advising on winding up and transfer of structured programmes.
- Advising a number of international insurance companies on the development of cyber policies across multiple jurisdictions in Europe.
- Advising the legal team of a major insurer in relation to the wording of consumer insurance policies, including travel, death plans, sports cover and credit card products. We were also asked to provide input on regulatory issues and to draft Key Features Documents.
- We have been involved in the drafting of a number of solicitors' market wordings, including a customised policy wording for large international law firms.
- Preparing a major insurer's standard brokers' E&O wording.
- Drafting a security consultant's all risks policy (covering PA, liability, medical expenses etc) for a new Lloyd's syndicate.
- Advising an insurer on global schemes, differences between master policies and local policies, status of DIL/DIC clauses.
- Advising on operational risk covers for investment banks.
- Review of liability coverage arrangements for a leading UK based, international facilities management company.
- Drafting numerous property and liability reinsurance contracts for (re)insurers including outwards protections with cover limits of circa \$5 billion.

- Acting for a major Singaporean reinsurer in drafting a lien policy for purchasers of second-hand ships.
- Providing policy drafting advice to insurers on a national aviation authority liability policy.
- Advising brokers on global liability policy wordings.
- Advising Dutch brokers on London market construction PI wording.
- Advising Capsicum DA in relation to issues arising on a broker transfer relating to a number of delegated authority agreements where the outgoing broker was questioning commission arrangements.
- Advising Avantia in respect of its capacity arrangements involving drafting and negotiating binding authority agreements and claims handling agreements.
- Advising on multi-lateral negotiations to establish a new product for medical professionals including:
- Advising a Lloyd's managing agency and its subsidiary coverholder and service companies on the divestment of certain interests and re-negotiation of binding authority agreements for business underwritten in the Netherlands and the UK.
- Advising on sale and purchase of several MGAs/coverholders in 2017 including full contractual and regulatory due diligence reviews of binding authority agreement, TOBAs and claims handling agreements.
- Advising a UK insurer on FCA enforcement action being brought in respect of its failure to oversee delegates appropriately. We have advised several other insurers and wholesale brokers on FCA's expectations in this area.
- Acting for an appointed representative supplying warranty insurance for home appliances on a variety of matters including:
 - Advising on termination of their existing insurer relationships
 - Review of the proposed terms with their new insurer relationship including TOBAs
 - Defending them in a variety of litigious matters including claims and employment issues
 - Advising on regulatory issues with the FCA, data protection issues with the ICO and potential tax issues.
- Acting for an appointed representative supplying warranty insurance for TV, satellites and mobile phones on a variety of matters including:
 - Advising on termination of their existing insurance relationships
 - Acting as corporate adviser on acquisitions of books of business
 - Review of commercial agreements including TOBAs and claims handling agreements
 - Dealing with potential litigation relating to ownership of customer data
 - Advising on regulatory issues.
- Acted for a UK insurer in respect of distribution agreements with a number of different distributors for the distribution of protection products in the UK and Ireland and associated reinsurance agreements to reinsure the vast majority of its risk under the policies sold under such distribution arrangements.
- Acting as corporate adviser on acquisitions of books of business involving coverholder arrangements.
- Advising on regulatory issues with the FCA, data protection issues with the ICO and potential tax issues.
- Negotiating claims handling arrangements as part of delegated underwriting agreements including recently for a London Market broker.
- Advising a personal accident insurer in respect of several alleged breaches of a binding authority by their coverholder.



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Political Risk and Trade Credit

Our Hong Kong and London teams have significant expertise in advising insurers, reinsurers, brokers and others on political risk and trade credit disputes. Our extensive network in Europe means we are particularly well placed on European losses.

Our experience

Confiscation, expropriation, nationalisation or deprivation, political violence & terrorism

- Acting for underwriters under a CEND policy in relation to a large quantity of aluminium that was expropriated by the Tajikistan government and then assisting insurers to make recoveries from third parties.
- Advising an insurer on its ability to make recoveries under the Riot (Damages) Act 1886 following the London riots.
- Advising an insurer on aggregation wording contained in a terrorism policy post 9/11.
- Advising a leading Lloyd's syndicate in respect of an aviation loss involving misappropriation of planes in Mexico.
- Providing coverage advice to an insurer whose insured was facing claims from multiple crew members under its Kidnap and Ransom policy.
- Acting for insurers on their exposure under CEND policy following confiscation of US\$1 million by the Securities Service in the Democratic Republic of Congo.

Contract frustration & credit risk

- Advising a broker in respect of a potential exposure as a result of a large product recall claim made by a leading drugs manufacturer.
- Acting for a leading London Market broker in mediating the settlement of a major trade credit dispute between one of the world's largest grain exporters, based in Missouri, and a major international insurer. The dispute involved both litigation in Missouri and arbitration in London, and arose from the buyer's default on grain exports to Mexico.
- Advising on coverage under an export credit insurance policy that covered a textile company. The claim related to an alleged breach of warranty regarding collateral securing credit for the export of machinery to Morocco.
- Acting for trade credit insurers in a US\$5.5 million complex fraud case including German sellers, intermediaries, a 'Fortune 500' Chinese company and Hong Kong receiver, as well as a Chinese bank and its refusal to pay under a bill of exchange.
- Acting for trade credit insurers in respect of a US\$90 million claim presented by an insured bank in which its customer had sold to a related buyer with 180 day

credit terms which resulted in both parties ceasing business.

- Acting for credit insurers on the investigation of a Japanese electronics manufacturer in a series of failed trades with a counterparty which transpired to be the acts of two rogue employees working for the buying and selling companies.
- Advising on policies relating to the improper calling of bonds.
- Acting for Lloyd's underwriters in Commercial Court proceedings concerning alleged forgery of a reinsurance slip by a broker and purported placement of bond reinsurance for a construction project.
- Advising a leading Lloyd's syndicate following the cancellation of various events in the United Arab Emirates after a declaration of national mourning.
- Advising a broker in respect of alleged negligent placement of a trade credit policy.
- Advising a leading London broker on Iranian sanctions compliance issues.
- Advising a London insurer on general compliance in the light of Export Control Order restrictions.
- Advising insurers on coverage issues arising out of a claim concerning non-payment by a Central American counterparty for fuel oil delivered by the insured.
- Advising insurers on coverage issues concerning a trading exchange contract where the subject matter was delivery of gas oil.
- Advising on coverage issues in respect of credit insurance provided to a debt factoring company.
- Advising on a case concerning the reinsurance of advance payment guarantees issued to ship buyers or banks in relation to Korean ship building interests.
- Advising on the terms of a trade credit policy issued to a metal importer/exporter.
- Advising insurers and the ABI trade credit committee on issues with trade credit wordings.
- Reinsurance policy drafting advice for a European state-owned export credit provider in relation to exports to Laos, Azerbaijan and Slovakia.
- Advising on claims arising from trade credit losses in Greece and Ukraine and the mitigation of loss.
- Advising a reinsurer on coverage for a large trade credit claim.
- Advising on claims arising from trade credit losses in respect of financing provided to commodities traders and steel manufacturers.



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Property

Our highly regarded Property Insurance team regularly provides advice to the insurance market on property coverage issues, disputes and subrogated recovery actions.

Our experience

Property coverage and advisory

We have advised in relation to a number of complex property issues internationally and in the UK.

Examples include:

UK

Advising in relation to:

- Property damage arising from the 2011 riots.
- Multiple fires at various waste management and recycling sites in England and abroad.
- Several wind farms (onshore and offshore), including the largest wind farm in the world, Dogger Bank and the multi £billion Inch Cape and Moray Firth offshore wind energy developments.
- A range of matters concerning the upgrade of the Victoria line and claims arising from the Jubilee Line extension project.
- Coverage issues arising out of the Heathrow Express tunnel collapse.
- Damage to a motorcycle production factory caused by fire, with a value of £100 million.
- The construction of a large retail development in the South of England.

International

Advising in relation to:

- Operations and issues at a number of wind farms in Germany, Italy, Bulgaria, Poland, Czech Republic, Romania, Ukraine, Serbia, Tanzania, South Africa and Brazil.
- Solar power plants in Bulgaria, Czech Republic, Ukraine and Italy.
- The construction of the airport facilities in Sofia and Berlin.
- The construction of over 150 kilometres of motorways and A-type roads in Slovakia.
- An automotive manufacturing plant in Serbia.
- The construction of the National Stadium in Poland, an electricity power plant in Slovenia, an alternative fuel power plant in Germany, railroads in Russia and India.
- A shopping centre development in Switzerland.
- Bridge collapses in Mexico and Russia.
- Terrorist attacks on major pipelines in Turkey.

- Damage to a power plant in Thailand caused by fire.
- Earthquake damage to tunnelling and a viaduct serving the Anatolian Motorway in Turkey.
- Claims arising from the Melbourne City Link in Australia.
- Claims arising out of the collapse of a section of the Singapore MRT Circle Line extension.
- Coverage issues under consequential loss cover provided in respect to Taiwan High Speed Rail Link, following tunnel collapses.
- Explosions at a chemical processing plant in India.
- Shipyard construction in Brazil.
- Hurricane losses to various risks in the Caribbean.
- Blast furnace failures in Indiana, UK and Germany.
- Recovery of property losses for multi-national energy companies and their insurers, as well as in property liability disputes.
- Abuse of Binding Authority Agreements.

Major losses and contested coverage

We also frequently advise on complex, high value disputes involving coverage or quantum issues. We understand the complexities of placing large risks into international (re)insurance markets and how to resolve disputes that can arise.

We have acted or advised in relation to a number of major market losses including:

- Buncefield
- Exxon Valdez
- World Trade Centre
- Canadian oil sands
- Piper Alpha
- New Zealand earthquakes
- Queensland and Thailand floods

Examples include:

- Representing insurers in arbitration proceedings in relation to the explosion at the Total Fina Elf Toulouse Refinery.
- Advising insurers on coverage issues in relation to a claim made by a large aluminium producer/manufacturer resulting from interruption in power supply caused by the explosion at the Rusal hydroelectric power station in Serbia.

- Acting for the insurers of the Saudi Arabian State power company in 16 arbitrations.
- Defending a global insurer in a dispute with a multi-national company that claimed losses following the collapse of a structure in Russia.
- Acting for reinsurers of numerous geothermal power construction projects in Indonesia on issues arising in arbitrations.
- Acting for the insured in arbitration proceedings with all risks insurers following the explosion and destruction of a fertiliser production plant in Louisiana.
- Arbitration relating to the construction of a port facility in Egypt.
- Restructuring various property coverage and business interruption disputes by mediation or ADR.

We are also very familiar with property treaty reinsurance coverage and the recovery issues which frequently arise for risks or catastrophe losses. We are very experienced at conducting reinsurance litigation, arbitration and alternative dispute resolution.

We also regularly act as supervisory or monitoring counsel in connection with proceedings internationally.



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Subrogated recoveries

We are experienced at pursuing recovery actions for property insurers and their insureds.

Examples include:

- Pursuing a subrogated recovery for insurers, following damage to valuable high-tech production machines.
- In the aftermath of the serious disturbance and fire at Yarl's Wood Immigration Detention Centre, we were retained by the centre's property damage insurers to protect their interest in the various inquiries launched by the Home Office, the local County Council and the Fire Service and to pursue the subrogated recovery of their losses under the Riot (Damages) Act 1886.
- Advising a multi-national insurer on a subrogated action pursued against a contractor following property and business interruption claims arising out of the performance of a contract for the overhaul of a power unit in Poland.
- Advising on subrogated recovery actions in relation to a variety of industrial premises and utility sites.
- Obtaining and enforcing money judgments, Freezing Orders, Search and Seizure Orders, Charging Orders and Orders for Sale or Possession for insurers.



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Reinsurance

Our Reinsurance team is one of the leading reinsurance practices in the market. We act on the largest and most complex reinsurance litigation and arbitration, and advise on the development of innovative products and compliance within an ever-changing regulatory environment. We have significant experience in advising on all types of inwards and outwards reinsurance and retrocession claims across non-marine (including property and casualty), marine, aviation, accident and health and life classes of business.

Much of our practice is international, conducting or overseeing arbitrations or transactions in jurisdictions as diverse as London, Bermuda, the US, Australia, the Far East, Middle East and Continental Europe. The breadth and depth of expertise across our CMS network ensures an unrivalled European footprint.

We have the capability to handle the largest international disputes, regulatory and transactional assignments, but we also believe in quality, focused, commercial advice, proportionate to the sums at risk.

Our experience

WTC losses

- Advising/representing in arbitration proceedings a market leading reinsurer on their retrocession collections arising from WTC involving property and aviation XL retrocession programmes, including aggregation, coverage and non-disclosure issues.

Power plant losses

- Advising on numerous international insurance/reinsurance power plant claims spanning the Philippines, Thailand, Costa Rica, Guatemala and Chile, and including one loss of \$100 million.

Natural cat losses

- Advising/representing the market in proceedings in relation to claims arising out of the Chilean, New Zealand and Japanese earthquakes, including a market arbitration focusing on aggregation.
- Advising on major property XL reinsurance disputes arising from natural disasters such as Katrina, Rita and Wilma, European storms and New Zealand and Chile earthquakes.
- Advising in connection with UK and European flood losses.
- Advising a number of syndicates and companies in relation to aggregation and coverage issues arising from North American wildfires, including a number of disputes.

Wordings

- Architect of ReWord database of reinsurance clauses, a comprehensive, qualitative and interactive database of market and client-specific reinsurance clauses, which won the British Insurance Award for Technology in 2008.
- Pioneer of automated online checks for treaty reinsurance wordings.
- Drafted numerous property and liability reinsurance contracts for (re)insurers including outwards protections with cover limits of circa \$5 billion.
- Wording advice for one of the leading reinsurers in the market on a newly developed Clash programme for a major domestic and international insurer.

Variable quota share arbitration

- Arbitration on behalf of a major US reinsurer in relation to a book of excess North American Casualty business underwritten by a London Market insurer, involving highly technical issues on the cession of risks to a Variable Quota Share treaty.

Regulatory and solvency

- Our expert financial services lawyers advise regularly on regulatory changes affecting reinsurers' operations across the whole of Europe, in particular Solvency II and the demise of the FSA.
- We also advise on the conduct of business beyond the EU, for example in Russia and Ukraine.



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Run-Off

- Successfully conducting the defence of an arbitration claim against the long-established London branch of a state-owned insurer arising from its alleged participation in aviation reinsurance pool business from the 1950s-1980s.
- Defending reinsurers in Commercial Court proceedings relating to their alleged reinsurance of EL pool business in the 1980s.

Conducting business internationally

- The impact of different legal systems on losses arising from man-made or natural disasters.
- Political and legal risk in conducting business covering certain jurisdictions.
- Advising on compliance with international sanctions and trade embargoes.
- Policy form requirements.



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Additional strength in the reinsurance market, particularly with regard to losses concerning the energy, mining and aviation sectors.

Chambers & Partners



Sanctions

CMS has in-depth international sanctions experience across its sectors and practice groups, including (re)insurance. We regularly advise (re)insurers, coverholders and brokers on the structure of EU/UK sanctions regimes and how they impact the London insurance and reinsurance market.

Sanctions and embargoes generally take the form of financial restrictions, travel bans and import/export prohibitions or constraints. The (re)insurance market needs to take particular care when dealing in international trade to ensure that transactions do not violate sanctions rules against a specific country, company or individual.

The real challenge is how market participants operating in a global context, in complex supply chains, and in high-risk jurisdictions, can ensure compliance with continually evolving sanctions restrictions. Practical scenarios rarely fall neatly within the wording of the legislative rules, and, with little in terms of guidance or case law, risk-assessment tends to fall to the commercial decision-makers in business. It is for individual businesses to assess their level of risk and decide on an appropriate compliance approach.

How CMS can help

- We assist with urgent breach response and potential breaches of sanctions.
- We provide guidance on risk assessment, screening and due diligence, monitoring and reporting; all aspects of compliance and controls.
- We liaise with OFSI on licence applications.
- We advise on the specifics of UK enforcement, and work alongside our colleagues across CMS to provide advice on enforcement at different national levels in the EU.
- We advise insureds in the international energy, real estate, tech and satellite industries in connection with a broad range of sanctions matters.
- We provide practical strategies to navigate the complicated and ever-changing regimes, as issues arise.
- We provide bespoke training sessions on sanctions screening and general compliance, including enhancement of internal measures.
- Our sector focus enables us to understand your business environment and assist with devising business strategies that address challenges as they apply in your market.
- We have strong connections with sanctions experts in other jurisdictions, in particular in the United States.

Our experience

- Advising clients in the (re)insurance, property and transportation sectors, who are trading with Russian companies/individuals, on the evolving sanctions rules regarding Crimea and Ukraine.
- Advising financial services and (re)insurance clients, on potential breaches of sanctions rules by virtue of offering (re)insurance, including in the context of delegated authority and reinsurance arrangements.
- Advising (re)insurance brokers, on specific Iranian sanctions compliance issues.
- Advising Lloyd's syndicates on sanctions compliance and the regulatory issues surrounding trade sanctions and Export Control Orders.
- Advising Lloyd's brokers, on the effect of/compliance with LMA 3100.
- Examples of our wider sanctions capabilities include:
 - Advising an international company, on compliance with the EU Russian sanctions regime and setting up a franchise of their business in Russia.
 - Advising a satellite operator on a general programme for compliance with sanctions rules.
 - Advising a UK manufacturing company on a sanctions enforcement investigation by the UK's Office of Financial Sanctions Implementation.
 - Advising extensively, across all sectors, on the implications of investing in and dealing with Iran further to the lifting of the JCPOA in January 2016.
- Drafting a comprehensive sanctions advice memorandum for a global leading telecoms company covering EU sanctions, UK enforcement and penalties, jurisdictional scope of applicable sanctions, and practical due diligence processes for managing risk, and coordinating advice from counsel in the Netherlands, the USA and Hong Kong.
- Advising a technology company on the acquisition of a company with previous dealings in Iran and other embargoed countries.
- Advising a major energy company on issues arising from the EU Syrian sanctions regime, including the submission of a licence application to HM Treasury.
- Advising an energy company on the sanctions implications of indirect export to Iran via Dubai.
- Advising real estate companies on the position under sanctions rules of lease arrangements with Libyan counterparties/the application of Iranian and sanctions rules generally.
- Advising an energy company on whether their dealings with specific individuals and entities were prohibited under the Egyptian sanctions regime and advising on the impact generally of entering into dealings with companies whose directors and shareholders are on relevant sanctions lists.



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Solicitors

Our specialist Solicitors' PI team is led by Ed Foss in London, Zoe Burge in Bristol and Harriet Munro and Graeme MacLeod in Edinburgh. We have a strong and growing practice and our team is a recognised leader in solicitors' professional indemnity work. We have a particularly strong reputation for handling complex and heavyweight matters.

Since the demise of the former Law Society mutual, the Solicitors Indemnity Fund, we have acted for 20 Qualifying Insurers in the defence of claims brought against their solicitor insureds.

Our professional clients include large international law firms and top 10 City law firms.

We have acted for many overseas law firms and their insurers in the defence of claims in jurisdictions as diverse as Hong Kong, the Caribbean, Germany, Italy, Scandinavia, the Channel Islands and Ireland.

Our experience

- Large corporate and tax related claims, including tri-partite disputes involving 'Magic Circle' law firms and 'Big Four' firms of accountants.
- Insolvency and banking related disputes, including a claim for approximately £115 million by Credit Suisse following the insolvency of Parmalat.
- Large commercial property losses.
- Residential property disputes related to mortgage lending and fraud.
- Pensions claims arising out of scheme deficits and amendments to scheme rules, including very substantial disputes.
- Substantial claims relating to allegedly mishandled litigation.
- Mortgage fraud.
- Multi-million pound claims for breaches of undertakings.
- Claims under the wasted costs and non-party costs jurisdiction.
- Claims concerning investments and tax avoidance schemes.
- Insurance issues arising out of the insolvency of large law firms.
- Insurance issues associated with technology failures.
- Insurance issues arising out of dishonesty and the application of the SRA's minimum terms and conditions (MTC), as well as those arising in non-MTC excess layer insurance.
- We have been involved in the drafting of a number of solicitors' market wordings, including a customised policy wording for large international law firms.
- We advise large law firms on risk management and regulatory issues.

Solicitors' Claims: A Practical Guide

We are the authors of *Solicitors' Claims: A Practical Guide*. The purpose of the Guide is to assist those involved in solicitors' professional indemnity – whether they are insurers, partners or lawyers in law firms, directors of risk or brokers – by drawing together the legal and practical issues which most commonly arise in these types of claims.

The Guide highlights potential problem areas, discusses the legal principles which the courts will apply in determining issues of liability, looks at risk management issues and seeks to give practical guidance as to how potential pitfalls can be avoided in the future.



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Particular expertise in disputes involving legal negligence.

Legal 500

Surveyors

We have a market leading professional indemnity practice and our Surveyors' PI team has many years' experience of advising on all aspects of surveyors' professional risks. We handle complex policy disputes, defend surveyor insureds and deal with subrogated claims.

We have advised the RICS and their members on a range of issues, including their Minimum Professional Indemnity Policy Wording, the liability of employed surveyors and limitations of liability in accountants' reports to member firms.

Our experience includes acting in most of the major reported decisions in the 1990s following the fall out from that recession, including *Banque Bruxelles Lambert SA v Eagle Star Insurance Co Ltd* and *Hamptons Residential Limited v Field*. We acted for the defendant surveyor and the RICS in *Merrett v Babb*. We also obtained an arbitral award confirming the validity of insurers' avoidance following a non-disclosure on the part of their insured.

We deal with claims (which often run into the millions) against some of the largest national firms of valuers.

We have particular expertise in mortgage fraud cases, which often involve advising upon a wide range of complex coverage issues, including the scope and limits of notifications, non-disclosure and the application of the Special Institution Conditions and aggregation.

Our experience

- Advising insurers in relation to notification, avoidance, aggregation and other policy issues arising out of claims against firms of surveyors where there have been extensive and systematic frauds, with the sums in issue being in the order £15 million.
- Acting for insurers in relation to aggregation and other coverage issues arising from a series of fraudulent overvaluations prepared by Mr McGarry on behalf of Dunlop Hayward.
- Advising insurers and their insureds on claims arising out of alleged mortgage fraud, including claims for contribution by other professionals.
- Advising insurers in a £18 million dispute relating to alleged overvaluation of high rise residential development in Manchester.
- Advising London surveyors in claims arising from investment strategy advice to European claimants.
- Advising insurers in relation to the defence of a professional negligence action raised against a valuation surveyor. The claim arises from the valuations provided for various hotels in Scotland. The claim was raised in the Court of Session in Edinburgh and sought damages in excess of £3 million



- Advising a range of international and national surveying practices, a building society, and their respective insurers in the defence of a number of professional negligence claims made against their valuers in relation to commercial and residential property valuations. The claims range from low to high value and raise a variety of legal issues.
- Advising a major surveying practice on its standard valuation terms and conditions for use in England and Wales in order to protect against potential future overvaluation claims.
- Advising a major UK surveyor practice in a £5.8 million claim concerning the complex redevelopment of educational buildings into 62 residential dwellings.
- Advising insurers and their insured, a large surveying practice, on claims relating to valuations undertaken for the purposes of secured lending in excess of £20 million on a commercial property portfolio. This involved properties in England and Scotland and therefore employed our multi-jurisdictional capabilities.
- Participating in the RICS Independent Consultation on Valuation by providing our analysis of the challenges facing surveyors together with our recommendations for the future.
- Acting for a national surveying practice and its insurers in a £2 million claim concerning cross-jurisdictional issues arising out of the incorporation of the surveyors' general terms and conditions in valuation reports.
- Advising whether the contract between parties should be subject to the jurisdiction of the English or Scottish courts in the context of time bar issues.
- Advising in Scotland on an over-valuation claim with claimed damages of c.£6 million. The claim concerned valuations of parcels of development land and associated planning points and required in depth analysis of complex issues in relation to a significant consequential losses claim.



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Technology

New technology is disrupting existing business models and creating new ones. It is impacting the scope of exposure faced by insureds and creating opportunities to develop new products and business lines. Increasingly, companies are reliant on technology as a means to do day to day business.

CMS has one of the UK's leading technology practices. Our specialist insurance team draws on expertise from across practice areas to advise insurers on claims against technology professionals as well as the numerous types of claims that can arise out of a failure in technology.

We have considerable experience of dealing with large, complex cases as well as the smaller day-to-day claims in this sector. We work closely with our network of international offices to obtain local support for claims with an international involvement.

Whether required to defend a technology professional or advise insurers on coverage in respect of first or third party claims by or against an insured arising out of a technology failure we have the experience and cross-sector expertise to guide you to a timely, legally sound and commercially sensitive resolution.

Our experience

- Acting for software developers of app based computer games in the defence of a claim alleging failure to deliver defective games and/or in accordance with agreed specifications.
- Regularly advising insureds on recovery prospects against third parties following cyber incidents.
- Acting on the defence of over 150 claims by customers following a technology failure by a third party software provider. We are pursuing a strategy of negotiated settlement with classes of claimant and advising insurers on a subrogated recovery claim against the provider.
- Advising insurers on coverage under a Tech E&O policy following the settlement by the insured of a civil claim by a global mobile network provider where the insured's errors allegedly lead to the outage.
- Advising on coverage under a Tech and Cyber policy for claims by the insured for losses suffered as a result of a cyber attack on its service provider that resulted in a technology failure at the insured.
- Advising the insurers of a multinational networking and telecommunications company on policy coverage for global claims following a systems failure leading to the insured's clients being without cellular communication technology.
- Advising insurers of a supplier of telecommunications software and support services on contractual liabilities and coverage issues arising out of a service outage affecting multiple international customers.
- Advising a cloud hosting service provider on notification and contractual issues following a cyber attack compromising multiple customer environments.
- Advising insurers of financial institutions on coverage issues associated with large scale technology failures (including under PI Crime cover).
- Advising insurers of professional services firms on coverage under conventional PI policies for technology failures and following cyber-attacks.
- Advising the Italian division of a leading global insurance company on the design and implementation of internal procedures for data protection compliance.
- Advising insurers in respect of a multi-million pound dispute between software suppliers and users concerning alleged breaches of the contract for supply and installation of software, including advice on complex policy coverage issues.
- Advising the French division of ATRADIUS on IT and data breach insurance policies.
- Assisting with 'Cyber Incident Workshops' aimed at making Insureds aware of cyber risks and (through scenario planning and testing) establishing best practice policies within the workplace.
- Advising insurers on coverage for losses arising out of social engineering frauds and IT outages.



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Title Indemnity

Our insurance team is one of the leading insurance practices in the market. Our team has considerable expertise in title insurance issues that may arise on a transaction involving property and has assisted several European offices in reviewing and negotiating indemnity insurance policy wordings on behalf of our clients.

In recent years Central and Eastern Europe has seen strong growth in the uptake of title insurance coverage. The take up is not restricted to purchasers of property but also existing owners in their position as sellers, developers and lenders financing the transaction. Given the large scale of these transactions indemnity insurance capacity is often sourced from the London insurance market and policies subject to English law.

Our insurance team has assisted numerous CEE offices in the review and negotiation of policy wordings for clients as well as offering more general advice on English law issues such as how to make a claim, the consequences of breach of policy conditions or the obligations on an insured/loss payee under various types of policy. As we also act for insurers in coverage disputes arising out of title indemnity insurance we are well versed in dealing with the key issues that tend to arise.

Our experience

- Acting for the buyer on the high profile purchase of a prime office building in Warsaw. The value of the transaction was €290 million and we advised the buyer on the terms of the policy as well as the commitment letter issued by insurers and an associated Warranty and Indemnity policy.
- Acting for one of the firm's largest clients as purchaser of two warehouses in Poland with a combined value of €140 million. We assisted this key client in negotiating the terms of the policy with London Market insurers.
- Advising the buyer of a company that held an interest in a property valued at €7.5 million in the Czech Republic. We advised on the policy's validity and enforceability as well as reviewing and negotiating its terms.
- Acting for the lender financing a €190 million purchase of 10 properties in Eastern Europe. We advised the lender on the strengths and weaknesses of being named as a loss payee under the owner's indemnity policies against taking its own lenders' policies. We negotiated the terms of the policies as well as the loss payee endorsement, guarantee and assignment of the insured's rights under the policies to the lender.

- Acted for a lender that financed the purchase of an €11 million property in Romania on the negotiation of a lender's insurance policy. As well as negotiating with insurers this type of policy also requires engagement with the owner over the terms and conditions and the obligations on each party under the policy. Our involvement included an explanation of the key strengths/weaknesses of a lender's policy compared to a buyer's policy, as well as the distinct obligations imposed on a loss payee compared to a named insured.
- Advising the buyer on the terms of an insurance policy procured by the seller and intended to transfer for the benefit of the buyer in respect of the purchase of three properties in Poland and Czech Republic. We were also able to provide English law advice on the enforceability and validity of an assignment of rights under the policy following the sale.
- Acting for Raiffeisen Bank International in the refinancing of the Radisson Blu, Bucharest's best hotel and the development of an additional wing, for Bucharest Turism SRL. CMS advised on the terms of policy endorsements increasing the sum insured, substituting the named insured and protecting the interests of lenders.
- Advising Raiffeisen Bank International as lead arranger in the €110 million financing of the acquisition, by European logistics giant P3, of a portfolio of logistics parks in Romania and Poland from CA Immobilien Anlagen AG, including English law advice on P3 owner's title insurance policy, assignment by way of security in favour of the lenders, the protection afforded by a loss payee endorsement and the extension of the policies to cover increase in total commitments and a new borrower.
- Advising Erste Group on a €91 million facility to the US group Blackstone to finance the acquisition of 12 logistics assets in Central and Eastern Europe (Romania, Hungary, Slovakia and Poland) from Austrian real estate group Immofinanz, including English law advice on the owner's title insurance, assignment by way of security in favour of the lender and the protection afforded by a loss payee endorsement.
- Advising on the coverage implications of a judicial review challenge to planning permission for a £3 million care home and care apartment development. The judicial review challenge was successful and CMS advised on the judicial review policy response to the possible next steps proposed to the insured to enable it to obtain the planning permissions it required.
- Assisting CMS' Real Estate team in reviewing the terms and conditions of a draft defective title insurance policy, entered into as part of a significant option to purchase agreement. CMS reviewed the policy to confirm whether it was in line with other similar title indemnity policies on the market and whether there were any unusual or onerous terms and drafting amendments to the draft policy.
- Considering a contractor's claim for delay costs following a year-long suspension of construction works to a 70 house development, the subject to a judicial review challenge. CMS advised on the judicial review policy response to the contractor's potential claim before the instruction to down tools was given and later assisted insurers in assessing the reasonableness of the contractor's claim, with the assistance of a quantity surveyor.
- Advising on a coverage dispute over a title indemnity policy where the insured had disclosed the existence of the policy, prejudicing insurers' position. The revelation was made to the claimant in an ongoing access dispute, subsequently leading to the claimant increasing its settlement offer from £15k to £200k as a direct result of the revelation.



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Transaction/Warranty & Indemnity Liability

We have been working closely with the insurance market since the emergence of this class of business some 20 years ago, both in the UK and in various other European jurisdictions, and for over 10 years in respect of claims. We were involved in drafting some of the early bespoke liability policies and have been involved with the product as it has developed into the class of business it is today. Through this, we have gained a considerable amount of insight into this interesting area and its particular features and requirements.

We are market leaders both in providing input into transaction liability due diligence at the underwriting stage, and in advising transaction liability insurers on coverage matters when claims are made under policies. We are one of the only firms in London to have an established practice advising insurers in both these respects and our corporate and tax teams liaise closely with our claims team to pool our experience for the benefit of our clients.

We utilise CMS's full-service capabilities in a large number of jurisdictions across the globe to advise insurers on claims alleging breaches of warranty based on underlying facts or circumstances arising from a wide variety of sectors and subject matters. In the past, these have ranged from accountancy to environmental issues, from construction and property to tax issues, and from intellectual property to health and safety issues.

We are able to tailor the services we provide to ensure that reasonable and proportionate investigations are conducted to suit the value and complexity of each individual case, having advised insurers previously both in respect of claims valued from tens of thousands of euros to those asserting loss in excess of €100 million.

Our experience

- Acting for insurers in the case of *Kwik-Fit v Aqeas*, relating to quantification of the loss for breach of warranty claims, and whether the parties and the court can have regard to post-completion events to assist with the assessment of loss.
- Advising insurers on coverage in relation to asserted tax liabilities totalling c.US\$90 million and arising in over 10 jurisdictions, claimed under a buy-side policy.
- Acting for insurers on a buy-side claim for breaches of accounting warranties related to stock accruals and the impact of potential misstatements in the accounts. Like many of the claims that we handle, this matter was settled on a consensual basis using a process involving accountants for each side.
- Advising insurers on coverage related to claims of breach of property-related warranties in a central European jurisdiction, working with locally based CMS colleagues, under a buy-side W&I policy. This matter was settled by mediation.
- Conducting coverage investigations and reaching a coverage determination on behalf of insurers on a claim made under a buy-side policy relating to allegations of seller fraud and breaches of warranty in respect of business licensing issues, including an analysis of whether such issues were disclosed by the seller during the due-diligence process.
- Working with insurers on claims made under a buy-side policy asserting breach of accounting warranties. Considering the coverage position in relation to and impact of potential misstatements on purchase price, in light of the valuation model.
- Providing coverage advice for insurers on claims made under title warranties given under the SPA following the discovery of a fraud.
- Providing insurers with coverage advice on sell-side policy claims relating to asserted breaches of warranty arising from third party litigation in Asia/SE Asia, including analysis of covered and not covered/excluded elements of the claim, and assessing the proper level of cover under the policy.
- Advising insurers in respect of claims made under a buy-side policy subject to local law in a Northern European jurisdiction, where the breaches of warranty alleged related to potentially deliberate or fraudulent misstatements in financial information provided by the seller to the buyer and in respect of issues allegedly experienced relating to customer complaints.
- Advising on coverage issues, with assistance from our Polish colleagues, arising under an English law policy in respect of Polish tax claims arising under a Polish law SPA.

- Considering and advising insurers on coverage in relation to claims arising out of pension scheme issues. The claims asserted breach of insured warranties under an initial sale agreement, which may have caused subsequent breaches of warranty by the buyer in a later sale of the target.
- Acting for insurers in relation to asserted breaches of warranty arising from an insured's purchase of a company in the energy sector and related regulatory matters.
- Assisting insurers on claims made under a buy-side policy where over 100 separate breaches of warranty were asserted relating to almost 20 different alleged heads of loss. The claims were in respect of a number of different problems identified following the purchase of the target, relating to Health and Safety, regulatory and property/plant and machinery issues.
- Advising insurers on specific litigation risks involved in M&A deals for the purposes of underwriting a specific litigation risk policy.
- Advising insurers in respect of multiple notifications made under a Spanish buy-side policy with the assistance of our Spanish colleagues, where the notifications related to tax procedures commenced by local state authorities and third party litigation.
- Acting, with our Italian colleagues, for insurers of an Italian law sell-side policy on matters notified by the insured. The notifications related to multiple claims asserted by an investor under an investment agreement (also subject to Italian law) alleging a number of breaches of warranty by the insured in respect of pre-existing litigation and the financial statements of the company, amongst other things.



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Travel

Our team has many years of experience in advising insurers and insureds who operate in the travel and holiday industries. We handle a wide variety of claims arising out of such business and are able to advise insurers in respect of personal injury (including serious catastrophic injury) claims as well as package travel/tour operator claims. We often work as co-counsel where there is a cross border element.

We act for defendant insurers on a regular basis but have also acted in the past for claimants and their families in circumstances where catastrophic injuries have occurred. This includes handling Court of Protection work which may also be relevant in this context (the Court of Protection in the UK requires settlements for minors to be managed).

Our experience

- Acting for an overseas insurer in respect of claims that arose from a holiday maker who suffered brain damage through an accident whilst on holiday in the Maldives.
- Advising London Market insurers in respect of their exposure arising out of an accident suffered by a young girl who fell out of a building and suffered severe head trauma.
- Defending a Lloyd's coverholder in complex, high value, multi-party litigation arising from the alleged breach of a binding authority to place combined insurance for travel agent, relating to the failing to comply with underwriting authority limits for turnover, passenger numbers and territorial limits and claims handling authority.
- Advising insurers in respect of potential liabilities arising out of travel cover offered as part of credit card agreements.
- Drafting an Accident Protector Policy for insurers.
- Acting for Lloyd's brokers in High Court proceedings that concerned a binding authority for travel insurance schemes placed in the Lloyd's market.
- Advising and defending overseas insurers in respect of a catastrophic personal injury claim under travel insurance issued arising from a driving accident and subsequent steps taken in repatriation.
- Defending a claim made by a holidaymaker following a catastrophic personal injury.
- Advising on issues arising out of placement (through coverholders) of high volume travel insurance business, involving regulatory and tax issues, as well as agency issues.
- Defending a claim for personal injury by airline passengers following a heavy landing.
- Representing a TPA on a high value medical matter concerning problems which arose during transportation of the insured individual between hospitals.
- Advising in relation to relevant Conventions including the Athens Convention, Montreal Convention and Chicago Convention.

Many of the claims that we have been involved in involve cross-border/international law elements. Our team of international lawyers is able to provide insurers with expert advice across a wide range of jurisdictions.



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