



BEGIN



Litigation trends in claims handling

Understanding the risks to refine your response

Tuesday | 15 July 2025 | 11.00 CET/10.00 UK

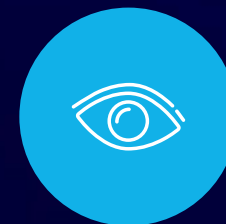
Product liability in a changing
world



Contents

To address these challenges, CMS insurance experts from multiple jurisdictions will discuss:

- 01 Particularities in each of the respective judicial systems
- 02 Claims for information against insurers
- 03 The interpretation of exclusions in insurance policies
- 04 Direct actions against insurers
- 05 Prescription and interruption of claims against insurers



The insurance industry is under significant pressure to constantly adapt to new realities, such as the use of litigation funding, the growth in class actions, new trends in professional negligence. Defence strategies will be influenced by a complex interplay of factors, requiring insurers to remain agile and informed.



WINNER EUROPE AWARDS 2025

CMS

Europe Law Firm of the Year



WINNER EUROPE AWARDS 2025

CMS

CEE Law Firm of the Year

Meet the panel



Remko van Baarlen
CMS The Netherlands



Kim van Zummeren
CMS Belgium



Federico Montanaro
CMS Italy



Thomas Böhm
CMS Austria



Marie Santori
CMS France



Andrew Milne
CMS UK





Particularities in each of the judicial systems

- **Netherlands**

- District Court, Appeal Court, Supreme Court
- ADR (arbitration, binding advice, mediation)
- Limited recoverability of defence costs
- Class action infrastructure in place

- **Austria**

- District Court or Regional Court (depending on the amount in dispute), Court of Appeal, Supreme Court
- Recoverability of costs (loser pays principle)
- Class action system in place.

- **Belgium**

- Court of first instance, Appeal court, Supreme Court
- ADR (mediation, arbitration, binding advice)
- Limited recoverability of defence costs
- No real class action, but there is an action for collective redress

- **France**

- First instance, Appeal Court and Supreme Court
- Very short oral pleading, mainly written proceedings
- Slow judicial system
- Limited recoverability of defence costs

- **Italy**

- Cartabia Reform
- Increased use of simplified procedure
- Settlement agreement in the first hearing
- Legal costs' issue under D&O policies

- **United Kingdom**

- High Court, Appeal Court, Supreme Court
- ADR (including mediation)
- Loser pays principle
- Opt In class actions (save for competition claims)





Trend (?): claims for information against insurers

- **Netherlands**

- New evidentiary law as of 1 January 2025
- Preprocedural right of action for information

- **Austria**

- Claims for information possible based on Insurance Contract Act and general principles of civil procedure law

- **Belgium**

- Book 8 new Civil Code: duty of cooperation in evidence finding
- Recent judgment (lower court): insurer ordered to submit reports, photographs and all other documents of fire expert
- Confidentiality-argument rejected

- **France**

- Burden of proof lies on the claimant
- Possible legal action to request documents and information essential to the opposing party

- **Italy**

- No specific law but only provisions of the Procedural Civil Code
- Exception for cases concerning motor vehicle liability

- **United Kingdom**

- Limited to where an Insured is insolvent
- Where an Insured is insolvent, a claimant can seek details of the insurance cover in place pursuant to the Third Parties (Rights against Insurers) Act 2010





The interpretation of exclusions in insurance policies

- **Netherlands**

- No wording requirements
- Intention of parties is highly relevant

- **Austria**

- No wording requirements
- Exclusions are interpreted objectively and limited to their wording, unless they were the subject matter and result of contract negotiations. In all cases, the purpose of a respective provision must be taken into account. The decisive factor is how an average, reasonably informed policyholder would understand the wording of the clause.
- In practice, exclusions are often but not always interpreted narrowly.

- **Belgium**

- No wording requirements
- Intention of parties is highly relevant
- Exclusion for gross fault strictly regulated by law
 - Exhaustive list of events that constitute gross fault
 - Detailed and precise wording
 - Burden of proof on insurer

- **France**

- Specific formal requirement: very apparent font
- Specific wording requirement: formal and limited (no interpretation needed)
- Sanction: Nullity of the exclusion clause

- **Italy**

- Specific requirements for exclusions
- Interpretation *contra proferentem*
- Risk limitation or unfair clause?

- **United Kingdom**

- Exclusions define the risk accepted and are to be read in the context of the policy as a whole
- Limited use of contra proferentem rule





Direct actions against insurers

- **Netherlands**

- Limited to death and bodily injury claims against liability insurer
- Not possible to exclude direct action claims in the policy

- **Austria**

- In general, direct claims against insurers are not possible.
- The injured party must first obtain a final and binding judgement against the policyholder. The injured party must enforce this judgement by seizing and having the policyholder's claim for indemnification against the liability insurer transferred.
- As exceptions to this general rule, an insurance contract may provide for a direct claim against the insurer. Also, in certain cases the law explicitly stipulates a right for such direct action.

- **Belgium**

- Statutory direct action against liability insurer
- Broad scope: all types of liability policies and all types of damage
- Cannot go beyond (i) rights of loss-bearing party against insured and (ii) rights of insured against insurer
- Very commonly used in Belgium

- **France**

- Direct action of the damaged third party against the insurer
- No matter the kind of damage suffered

- **Italy**

- Specific few cases
- New entry: direct action against the insurer of the healthcare facility or the doctor

- **United Kingdom**

- Usually limited to where an Insured is insolvent
- Most policies include terms otherwise barring third parties from bringing direct claims under the Contracts (Rights of Third Parties) Act 1999





Prescription and interruption of claims against insurers

- **Netherlands**

- Specific limitation period for insurance claims: 3 years
- Specific interruption rules for insurance claims

- **Austria**

- First party loss – 3-year period for claims from when the claim against the insurer has become due. When exactly a claim becomes due depends on the type of the claim.
- Third party loss – 3-year period from when the third party has become aware of the claim. If not, the claim prescribes ten years after the insured event has occurred.

- **Belgium**

- General prescription period: 3 years, exceptionally 5 years
- Direct action: 5 years, exceptionally 10 years
- Interrupted by claim notification until insurer's (final) position on coverage
- Interruption of injured party's claim against insured also results in interruption of their action against insurer and vice versa

- **France**

- Specific limitation period for insurance claims: 2 years
- Classic interruption cause: a legal action or a recognition of the right of the opposing party
- Specific interruption cause in insurance law: (i) the appointment of an expert and (ii) a register letter by the insured to the insurer requesting the payment of the indemnity

- **Italy**

- Article 2952 of the Civil Code

- **United Kingdom**

- First party loss - 6-year period for claims from when the insured peril occurs (e.g. property damage)
- Third party loss - 6-year period from claims from when liability is established and quantified (e.g. settlement or judgment)



Litigation trends in claims handling

Understanding the risks to refine your response

Q & A



Remko van Baarlen
CMS The Netherlands



Thomas Böhm
CMS Austria



Kim van Zummeren
CMS Belgium



Marie Santori
CMS France



Federico Montanaro
CMS Italy



Andrew Milne
CMS UK



Your free online legal information service.

A subscription service for legal articles on a variety of topics delivered by email.
cms-lawnow.com

The information held in this publication is for general purposes and guidance only and does not purport to constitute legal or professional advice.

CMS LTF Limited (CMS LTF) is a company limited by guarantee incorporated in England & Wales (no. 15367752) whose registered office is at Cannon Place, 78 Cannon Street, London EC4N 6AF United Kingdom. CMS LTF coordinates the CMS organisation of independent law firms. CMS LTF provides no client services. Such services are solely provided by CMS LTF's member firms in their respective jurisdictions. CMS LTF and each of its member firms are separate and legally distinct entities, and no such entity has any authority to bind any other. CMS LTF and each member firm are liable only for their own acts or omissions and not those of each other. The brand name "CMS" and the term "firm" are used to refer to some or all of the member firms or their offices; details can be found under "legal information" in the footer of cms.law.

CMS Locations

Aberdeen, Abu Dhabi, Amsterdam, Antwerp, Barcelona, Beijing, Belgrade, Bergen, Berlin, Bogotá, Bratislava, Brisbane, Bristol, Brussels, Bucharest, Budapest, Casablanca, Cologne, Cúcuta, Dubai, Dublin, Duesseldorf, Ebene, Edinburgh, Frankfurt, Funchal, Geneva, Glasgow, Gothenburg, Hamburg, Hong Kong, Istanbul, Johannesburg, Kyiv, Leipzig, Lima, Lisbon, Liverpool, Ljubljana, London, Luanda, Luxembourg, Lyon, Madrid, Manchester, Maputo, Mexico City, Milan, Mombasa, Monaco, Munich, Muscat, Nairobi, Oslo, Paris, Podgorica, Poznan, Prague, Reading, Rio de Janeiro, Riyadh, Rome, Santiago de Chile, São Paulo, Sarajevo, Shanghai, Sheffield, Silicon Valley, Singapore, Skopje, Sofia, Stavanger, Stockholm, Strasbourg, Stuttgart, Sydney, Tel Aviv, Tirana, Vienna, Warsaw, Zagreb and Zurich.

Further information can be found at **cms.law**