

Litigation trends

Insurance Group
2026 Webinar Programme

Lead lawyers **Andrew Milne, UK**
Remko van Baarlen, The Netherlands

Panel Members **Mylène Garrouste, France**
Federico Montanara, Italy
Daniel Zemp, Switzerland
Linde Van Vracem, Belgium

Speakers

Litigation trends

Insurance Group
2026 Webinar Programme



**Andrew
Milne**

Of Counsel

London, UK



**Remko van
Baarlen**

Associate

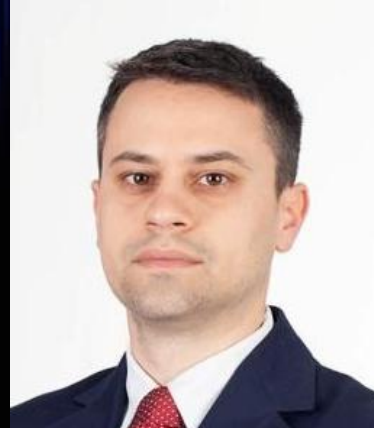
Amsterdam, Netherlands



**Mylène
Garrouste**

Associate

Paris, France



**Federico
Montanara**

Associate

Milan, Italy



**Daniel
Zemp**

Counsel

Zurich, Switzerland



**Linde Van
Vracem**

Associate

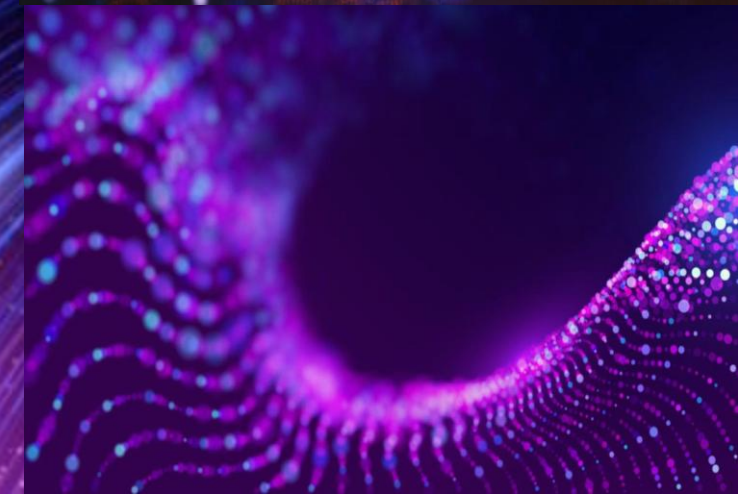
Antwerp, Belgium

Agenda

- 01 Class actions & litigation funding
- 02 Direct actions against insurers
- 03 Procedural disclosure mechanisms
- 04 Policy exclusions
- 05 Bonus: country specific trends

Litigation trends

Insurance Group
2026 Webinar Programme



Class actions & litigation funding

- **Netherlands**

- Op out class action infrastructure in place
- Securities claims, product liability, data privacy, ESG
- Litigation funding on the rise

- **Belgium**

- No real class action, but there is an action for collective redress
- Default opt-in system (post-judgment)
- Limited recoverability of defence costs

- **United Kingdom**

- Opt out class actions limited to competition claims
- Litigation funding is accepted but subject to some restrictions
- Litigation funding key driver in the increase in UK securities claims

- **Italy**

- A slight increase in class-action cases following the 2019 and 2023 reforms
- Moving from the Consumer Code to the Code of Civil Procedure
- Opt in mechanism - innovation on timing for adhesion

- **France**

- Very few class existing actions before the 2025 legal reform
- European reform of class action implemented in May 2025
- Opt in system: potential victims must actively join the class action. By lack of information or lack of proactiveness, the final group is often smaller than it could be

- **Switzerland**

- No class actions in Switzerland
- Joinder of parties theoretically enables collective litigation
- Limited practical relevance to date
- Increasing professionalisation of claimant activity (funding, assignment, claim aggregation) creates class-action-like dynamics

Direct action against insurers

- **Switzerland**

- Direct right of action against liability insurers introduced in 2022
- Victims gain direct access to insurers and coverage information
- Insurers become a visible litigation target from the outset
- Victim protection strengthened, but insurer liability remains limited to available policy coverage

- **Italy**

- Direct action against insurers was allowed only in specific cases
- Gelli-Bianco law introducing direct actions by victims against healthcare facilities' insurers or self-employed doctors' insurers
- New Foti law introducing direct involvement of insurers of public employees who manage public resources in proceedings before the Court of Auditors

- **France**

- Victim may sue insurers directly
- Victim does not have an automatic access to coverage information

- **Belgium**

- Statutory direct action against liability insurer
- Broad scope – Very commonly used
- Cannot go beyond (i) rights of loss-bearing party against insured and (ii) rights of insured against insurer

- **Netherlands**

- Limited to death and bodily injury claims against liability insurer
- Difference between WAM and 'regular' direct action

- **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



Procedural disclosure mechanisms

- **United Kingdom**

- Broad discovery in the UK, particularly in Court proceedings.
- Obligation to disclose helpful and unhelpful documents
- Difficult to obtain information about a defendant's insurance cover except where the defendant is insolvent

- **Netherlands**

- New evidentiary law as of 1 January 2025

- **Belgium**

- Duty of cooperation in evidence finding
- Judgment (lower court): insurer ordered to submit reports, photographs and all other documents of fire expert
- Confidentiality-argument rejected

- **Switzerland**

- Switzerland remains a non-discovery jurisdiction
- Claimants increasingly use targeted disclosure rights (insurance and data protection law)
- These rights improve case assessment and litigation preparation at an early stage
- Trend towards strategic pre-litigation information gathering, not US-style discovery

- **Italy**

- No specific law regulating claims for information against insurers
- Non-discovery jurisdiction: parties decides which documents to submit in court. Possibility to request the submission of a specific document in court under article 210 c.p.c.
- Exception under article 146 of the Italian Insurance Code in cases involving motor vehicle liability

- **France**

- No broad discovery: in principle, parties choose what they disclose
- Judge controls evidence production requests during trial (rarely used)
- Pre-trial investigative measures available to seize opponent's documents (at least 1 year before the claimant can access the seized documents)

Policy exclusions

- **Switzerland**

- Swiss courts apply strict scrutiny to coverage exclusions
- Excluded risks must be clearly and precisely defined
- Generic or overly broad exclusions may fail
- Careful drafting is therefore critical for insurers

- **Italy**

- Exclusions must be written in a particularly visible way (bold and capital letters)
- Clauses that impose limitations of liability are considered unfair, and are null and void unless specifically signed by the insured
- Interpretation contra proferentem in case of ambiguity

- **France**

- Strict requirements for the validity of exclusions, very protective of the insured
- Exclusions must appear in conspicuous characters
- Exclusions must be unambiguous and limited

- **Belgium**

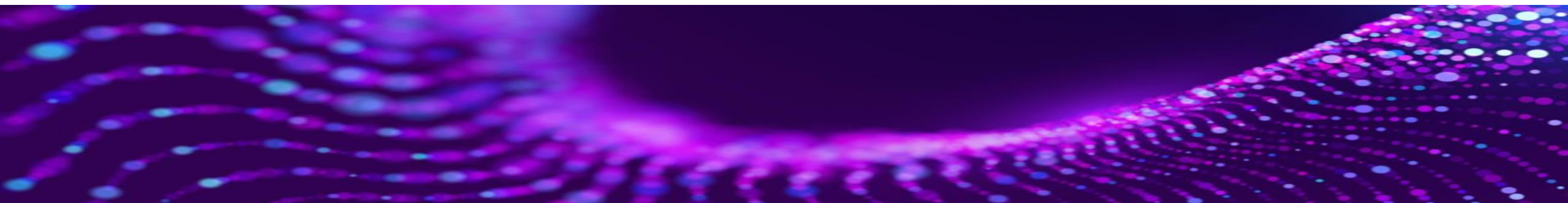
- Detailed and precise wording
- Loss of cover for gross fault strictly regulated by law
 - Exhaustive list of events that constitute gross fault
 - Personal nature
- Too vague: “*Any breach of the standards of care or safety, laws, rules or practices specific to the activities of the insured companies, which any person familiar with the subject matter should have known would almost inevitably result in damage*”

- **Netherlands**

- No specific wording requirements

- **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



Bonus: country specific trends

- **Switzerland**

- Internationalisation of Swiss litigation

- **Italy**

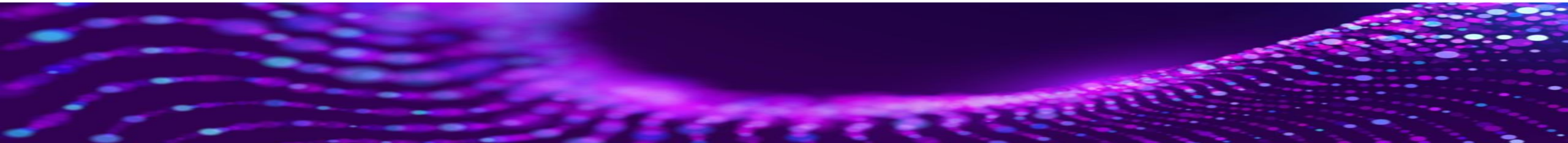
- Reform regarding the liability of company's statutory auditors

- **Netherlands**

- 'Discovery' of non-disclosure

- **United Kingdom**

- Courts grappling with the increased use of AI



Q&A

Litigation trends

Insurance Group
2026 Webinar Programme



**Andrew
Milne**

Of Counsel

London, UK



**Remko van
Baarlen**

Associate

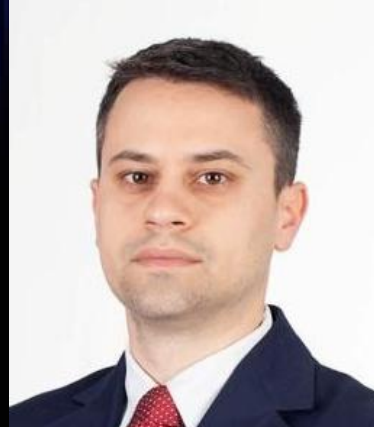
Amsterdam, Netherlands



**Mylène
Garrouste**

Associate

Paris, France



**Federico
Montanara**

Associate

Milan, Italy



**Daniel
Zemp**

Counsel

Zurich, Switzerland



**Linde Van
Vracem**

Associate

Antwerp, Belgium