

**2024 Insurance Sector Group  
Webinar Programme**

# **European Claims: Litigation trends and strategies**

**9 July 2024**

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# Your speakers today



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# What we will cover

## 01 Claims Trends

- Insurance disputes
- Professional negligence claims
- Class actions
- Litigation funding

## 02 Strategies

- Defending claims
- Settling claims
- Exercising costs control
- Effective monitoring of proceedings





# 1 Claims Trends

# Insurance disputes

## UK

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- Russian aviation insurance disputes
- Covid-19 business interruption losses

## Netherlands

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- Interpretation of insurance contracts
- Two months notification period after discovery of non-disclosure

## Spain

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- Limitative clauses
- Article 20 of the Spanish Insurance Act on late interests



## Italy

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- Life insurance disputes (unit and index linked policies);
- Potential trends: natural disasters and catastrophic events

## Belgium

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- Life insurance disputes : extent of the liability of the insurer vs. liability of the insurance intermediary
- Natural disaster claims following massive floods (July 2021)
- Potential trend: increase of D&O cases

# Professional negligence claims

## UK

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- Impact of inflation on claims values and costs
- Introduction of the Building Safety Act

## Netherlands

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- Tax advisors
- Introduction of the *Wet Kwaliteitsborging voor het bouwen*

## Spain

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- Medmal: not only professional negligence policies involved. Also, private health insurance policies
- Claims against lawyers and court agents

## Italy

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- Superbonus disputes
- Medical malpractice: introduction of Decree no. 232/2023

## Belgium

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- Potential impact of new book 6 of the Belgian civil code

# Class action

## UK

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- Significant growth in competition class actions
- Increasing number of event driven securities actions

## Netherlands

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- Litigation about admissibility of claims
- Increasing number of ESG related class actions to be expected

## Spain

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- No claims in the past
- Very strict requirements
- New Law to be passed out in 4Q 2024

## Italy

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- Class action as regulated by the Italian Law
- Potential increase in litigation

## Belgium

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- Still limited use of genuine class actions in Belgium (just beyond 10 cases – consumers' cases) vs. collective actions (i.e. related actions)
- Recent extension of the scope : aggrieved financial investors may now act through class actions



# Litigation funding

## UK

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- Uncertainty about litigation funding following Supreme Court decision in PACCAR
- Legislative reform on the horizon

## Netherlands

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- Class actions
- Legislative reform on the horizon

## Spain

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- Active and growing market
- Increasing number in anti-trust private enforcement cases
- Not precedents yet known in insurance related matters

## Italy

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- Practice and development of litigation funding in Italy
- Deontological criticisms

## Belgium

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- Uncertainty about litigation funding as no case law available
- Limited use of litigation funding as legal costs are quite low compared to other jurisdictions
- Deontological criticisms – recent recommendations of the Dutch speaking bars of Belgium (“OVb”)



## 2 Strategies

# Defending claims

## UK

- Strike out, summary judgment and security for costs applications
- Factual, expert and documentary evidence

## Netherlands

- No pre-action protocols
- Disclosure obligations
- Battle of experts

## Belgium

- Summary proceedings
- Factual and documentary evidence
- No disclosure obligations but forced production of evidence possible

## Italy

- Factual and documentary evidence
- No disclosure obligation

## Spain

- Disclosure obligations not mandatory: sought by means of counterparty's or third parties production of evidence
- Relevance of experts' cross examination (even joint cross-examination)
- Third party action against insurers

# Settling claims

## UK

- Alternative Dispute Resolution
- Part 36 and Calderbank offers

## Italy

- ADR and the impact of the Cartabia reform.
- Arbitration for insurance disputes on the horizon.

## Netherlands

- Alternative Dispute Resolution
- Active judges

## Spain

- Direct negotiation as most standard way to settle
- Out of Court mediation incentivized by the Courts themselves

## Belgium

- Alternative Dispute Resolution on the rise
- Courts increasingly active and referring to mediation
- Out of court or in court mediation

# Costs control



Negotiate rates



Agree litigation  
management terms



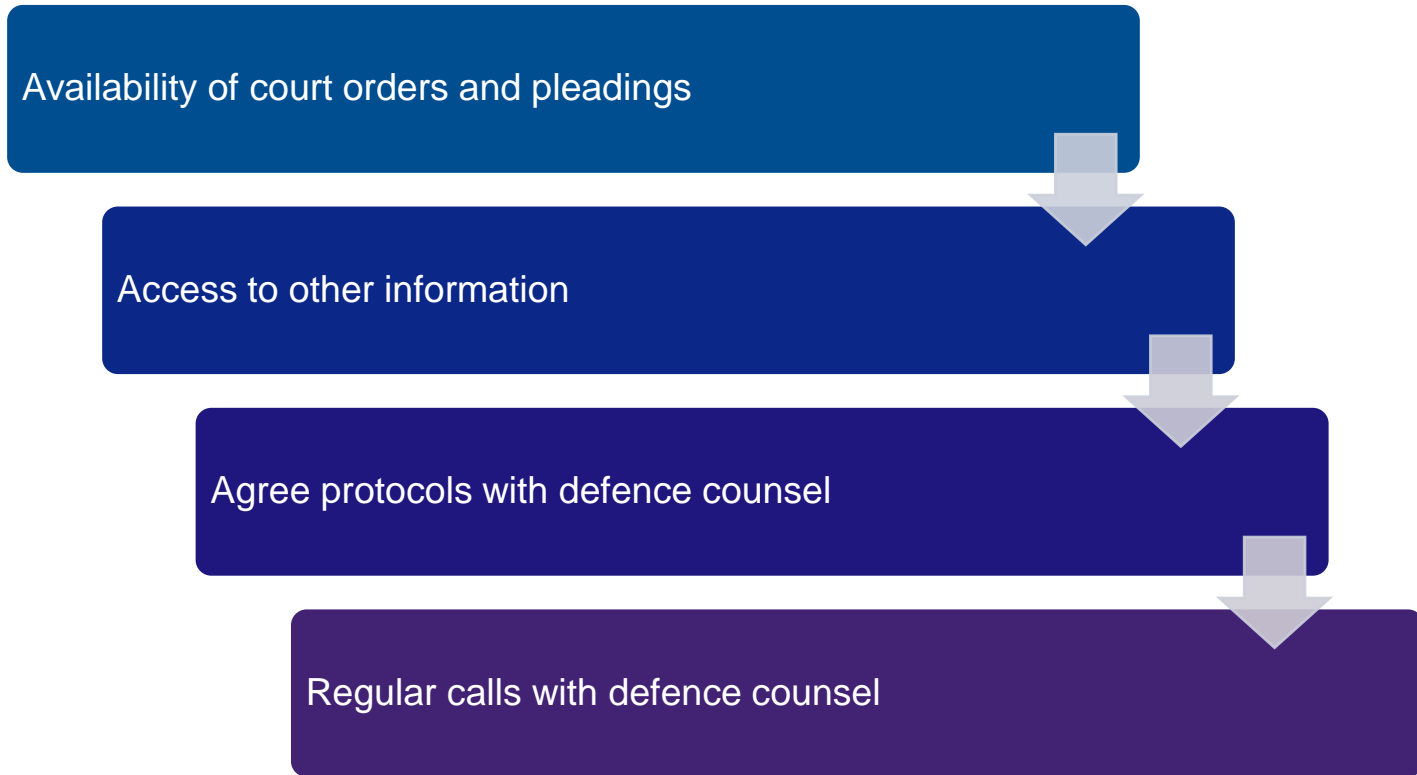
Request  
estimates/budgets



Focus on pre-action  
stage



# Monitoring proceedings



# 3 Questions?

# Upcoming webinars

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## **Main trends and traps when handling professional indemnity claims (European and not European jurisdictions)**

Wednesday 11 September, 11.00 CET/12:00 UK

## **PI Construction**

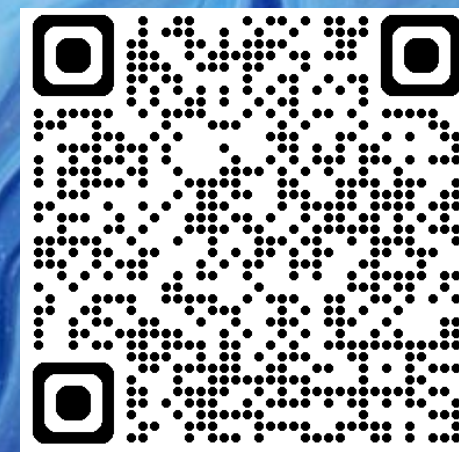
Thursday 17 October, 11.00 CET/12:00 UK

## **Claims handling**

Wednesday 6 November, 10.00 CET/09:00 UK

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