

CORPORATE INSURANCE POLICYHOLDERS ARE LIKELY TO FIND FAVOUR IN COURT

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Deals and cases

Newly released data reveals that insurance claims are amongst the most likely to succeed in UK courts. However, with COVID-19 bringing new complexities to potential claims, the insurance industry will be under scrutiny for the way it responds to the current pandemic.

According to analysis of over 1,000 cases, decisions made in insurance cases are also more likely to go to appeal, than those in most other industry sectors. Herbert Smith Freehills partnered with Solomonic, a litigation analytics company who collated the data, to understand litigation trends emerging from cases heard in the Commercial and Chancery courts. The analysis reveals that:

- more than half of cases brought by insurance policyholders (56%) succeed at first instance, a figure that compares favourably to the all-sector average of 48%, and with only maritime cases being comparably successful (57%)
- 1 in 4 decisions made in insurance cases are taken to appeal (25%). Only in the healthcare (31%), commodities and mining (26%), and utilities (43%) sectors is this figure higher, likely reflecting the fact that insurance claims in these sectors are heavily based on contracts and contractual interpretation
- a significant proportion of insurance cases relate to levels of insurance coverage, with insurance sector professional indemnity cases also high in number.

“The insurance market has been hardening for the last two years and policy claims can be expected to be subjected to greater scrutiny by insurers with less inclination to give the benefit of the doubt to difficult claims. COVID-19 brings an additional layer of focus to claims as policyholders facing business challenges seek to press recoveries where they properly can,” says Alexander Oddy, partner in Herbert Smith Freehills’ insurance disputes practice.

Further analysis was undertaken to reveal the extent to which the party’s legal representative can influence the outcome of a case.

The data revealed that, across all sectors, 47% of cases saw one party using a QC whilst the other did not. Where there was a mismatch, the QC succeeded in 58% of cases heard. When the same analysis was applied to insurance cases only, a mismatch of representatives occurred in just 26% of cases. However, in these cases, the QC-led team emerged successful in about three-quarters of the cases heard (73%).

“Every case has its own unique features and these together with policy wording and evidence will influence what happens in practice. However, the opportunity for corporate policyholders to understand litigant behaviour on the basis of trend analysis cannot be underestimated. With policy claims disputes likely to be on the increase, policyholders should seek to leverage every possibility tool to achieve a successful outcome,” says Alexander Oddy.

Co-founder of Solomonic, Gideon Cohen, says: *“Our data and analytics allow organisations to keep a close eye on critical insurance claim trends that may have a direct impact on their own prospects and business risk.”*

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