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The New Remedy for Late Payment of Insurance Claims

Richard Harrison

Legislative background

- Law Commission proposal
- Enterprise Bill
- Lord Flight’s amendment
- Industry backed amendment
- Current status
- In force from 2017(1 year after Act passed)

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Mechanics of the new remedy

- Implied term
- Additional and distinct remedy
- Causation, remoteness and mitigation

Reasonable Delay

- Type of insurance
- Size & complexity of claim
- Compliance with regulations and guidance
- Factors “outside the insurer’s control”

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Reasonable Dispute

- Reasonable grounds for disputing claim
- Insurer’s conduct in handling claim
- Purely objective test ?
- Pitfalls posed by legal privilege

Limits of the remedy

- Causation, remoteness and mitigation
- Availability of finance
- *Sempra Metals v Inland Revenue Commissioners* [2007] UKHL 34
- The vulnerable policyholder

Contracting out

- Non-consumers only
- Transparency requirements
- Can include limits of liability, excluded heads of loss or bespoke remedies
- Treating the customer fairly
- Not if deliberate or reckless breach
- When is late payment “deliberate” ?

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Special limitation period

- If fully paid - 1 year from last payment
- If partially paid – 6 years from breach
- Partially paid claim or two claims ?

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Practical Implications

- Compound interest claims
- Interim payments
- Vulnerable policyholders - a new underwriting risk ?
- Use of endorsements to limit remedies

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Practical Implications

- Record keeping – documenting the reasons and responsibility for delay
- Reserving
- Implications for reinsurance
- FOS

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Any questions?

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