

# Insurance litigation at Kennedys

**Abstract:** Hilary Smith describes the work of Kennedys, an international law firm specialising in insurance litigation, and the information sources its lawyers rely on. Written with a view, firstly, to provide guidance to legal information professionals who may be unfamiliar with insurance materials and, secondly, to generate interest amongst the legal information profession about the work of insurance litigation firms. Included are explanations of different types of insurance and common terminology used by insurance litigation lawyers.

**Keywords:** insurance; litigation; law firm libraries; information sources

## Introduction

Kennedys is a mid-sized city law firm with about 250 lawyers. Whilst it does some non-insurance work, the firm is best known for being one of the leading insurance litigation firms and it is in this context I write about the firm and the information sources it relies on.

One of the things I quickly realised on joining Kennedys was that insurance covers every aspect of life in much the same way as law does. The combination of the two makes for very interesting work for information professionals.

I have written the article with two audiences in mind. The first is those who find themselves working with insurance lawyers and who need guidance on how to establish a collection/service for them. The second is those who have an interest in finding out about the work of different firms and, indeed, at some time might find themselves applying for a post with an insurance litigation firm.



Hilary Smith

## Types of work undertaken

### Personal injury (defendant)

When an employee is injured at work and sues the employer, the employer will rely on **employer's liability insurance** to cover the claim. Likewise, when a pedestrian trips on a pavement and sues the local council, the local authority will look to their **public liability insurance** policy. Firms like Kennedys participate in the higher value cases such as catastrophic personal injury, asbestos litigation, industrial diseases and disaster claims.

### Clinical negligence

This is a specialist form of personal injury litigation involving patients suing NHS trusts or private hospitals for negligent treatment.

### Professional negligence

All professionals such as solicitors, architects and accountants are required to have a minimum level of **professional indemnity insurance** to cover the cost of negligence claims brought against them. When a claimant sues a solicitor for a negligent conveyancing transaction, the solicitor will rely on the professional indemnity policy to pay out.

Here is an example of how a professional indemnity insurance claim might arise and the complications that can be involved.

A surveyor responsible for a homebuyers report fails to identify extensive defects in a house and the owner buys the house relying upon his valuation. Defects are

## What is insurance litigation?

Kennedys acts for most of the top insurance companies and underwriting syndicates. When loss or damage arises, an insured entity will look to see if insurance will cover the loss/damage. We will either be instructed by that entity's insurer in order to advise upon policy coverage, or we will be instructed by both to defend proceedings, or perhaps we will be asked to oversee the involvement of foreign lawyers in a multi-jurisdiction dispute.

In practice, while we talk about litigation, this more commonly means other forms of dispute resolution, such as settlement, mediation or arbitration. It is rare for a case to actually get to court these days.

not apparent until the owner starts to redecorate, and the initial letter complaining about the standard of the report is dealt with as a minor complaint. The dispute drags on over a number of years, during which time it becomes apparent that the defects with the house are structural and the house is worthless. The surveyor fails to notify its professional indemnity insurers of the possibility of a claim and in fact changes insurers without telling the new insurers about these issues. Both sets of insurers decline the claim.

Areas where an information department might get involved are as follows:

- Evidence about the local area will be relevant, particularly if there is evidence of mine-workings, flooding or drainage problems (by Land Registry/local authority searches);
- Changes to the RICS (Royal Institution of Chartered Surveyors) manual over the period may be relevant to the standard of care expected from a reasonably competent surveyor (previous editions of professional standards guides and key texts are essential for this type of work, so a lawyer examining the claim can see what a competent professional at the time should have been aware of);
- The insurance policy wording applicable over the years may be relevant when it comes to working out coverage issues and the consequences of late notification and non-disclosure (we keep a collection of policy wordings which are indexed on our library management system, we also have a subscription to a helpline linked to a database from which we can obtain wordings);
- Case-law on coverage (ie does the policy cover the loss), disclosure (did the insured disclose everything they should have done at the time of taking out the policy) and late notification (of the insurance claim) will be necessary; (the usual case sources such as Westlaw and Lawtel but also law and insurance texts).

Details of change of ownership of the surveyor's group of companies might be relevant to whether the correct entity is insured and whether the correct defendant has been sued (company searches).

### Product liability

Kennedys acts for manufacturers and insurers in the event of a product causing harm e.g. drugs with serious side effects; healthcare products such as hip joints, which subsequently turn out to be faulty; foodstuffs e.g. diacetyl (the colouring in popcorn which can cause lung disease to factory workers); engineering components which break down. Often quite technical information is required and we rely on the British Library to provide us with British standards, articles from scientific/medical journals etc. We also assist expert witnesses with their information needs.

### Insurance/reinsurance policy disputes

These involve analysing the policy wording of an insurance policy to see whether it covers the loss incurred by the policyholder. These are referred to as **coverage disputes** and involve all types of policies. Kennedys handles many such disputes and has particular expertise in construction. Reinsurance companies insure insurance companies against their losses. They help insurers by spreading the risk.

### Insurance contract law

An insurance policy is a contract between the insured and the insurer. However, a distinct branch of case law has developed around insurance contracts, including the principle of good faith, the duty to disclose all material facts at the time of taking out the policy or making the claim, the duty to notify the insurer of loss incurred within a timeframe etc.

## Information sources

### Introductory texts

Insurance law is not a subject taught at many law schools, so most trainees have little knowledge of this area when they join the firm. Therefore, it is essential to have some introductory texts. The most popular ones at Kennedys are:

- Barlow Lyde & Gilbert. (2004) *Tolleys Insurance Handbook*. 3<sup>rd</sup> ed. Croydon, Tolley. (The 4<sup>th</sup> edition is due June.
- Barlow Lyde & Gilbert. (2008) *Insurance Law Handbook*. 4<sup>th</sup> ed. Haywards Heath, Tottel Publishing.)
- Bellerose, R.P. (2003) *Reinsurance for the Beginner*. 5<sup>th</sup> ed. London, Witherby.
- Birds, J. (2007) *Modern Insurance Law*. 7<sup>th</sup> ed. London, Sweet & Maxwell.
- Merkin, R. (2007) *Insurance Law: an Introduction*. London, Informa.

### Insurance dictionaries

Like law, insurance has its own terminology and getting to grips with at least some of the expressions is essential to understanding lawyers' enquiries. I find textbooks at least as helpful as dictionaries in understanding terms, as books tend to go into more detail in explaining the context.

We have an in-house dictionary of insurance terms but a recent one available to purchase is Bennett, C. (2004) *Dictionary of Insurance*. 2<sup>nd</sup> ed. Glasgow, Pearson Education.

### The classic texts

Insurance lawyers make heavy use of books and loose-leafs to look up points of law and find useful cases and the following are all very popular. They are the classics no insurance law library can be without.

- Clarke, M. *Law of Insurance Contracts*. Two volumes. Looseleaf. London, Informa. Two releases a year. If you don't want the expense of a looseleaf this title is also published as a hardback. The current edition is the 5<sup>th</sup> published in 2006.
- Lagh-Jones, N. (2002) *MacGillivray on Insurance Law: Relating to All Risks other than Marine with first supplement*. 10<sup>th</sup> ed. London, Sweet & Maxwell.
- At Kennedys this is the most popular insurance law text and trainees ignore it at their peril. The 11<sup>th</sup> edition is due later 2008.
- McGee, A. (2006) *Modern Law of Insurance*. 2<sup>nd</sup> ed. London, Lexis Nexis.
- Merkin, R. *Colinvaux and Merkin's Insurance Contract Law*. Three volumes. Looseleaf. London, Sweet & Maxwell. Three releases a year.
- Barlow Lyde & Gilbert. *Reinsurance Practice and the Law*. One volume. Looseleaf. London, Informa. Two releases a year.
- Butler, J. and Merkin, R. *Reinsurance Law*. Two volumes. Looseleaf. London, Sweet & Maxwell. Three releases a year.
- Padfield, A. (2007) *Insurance Claims*. 2<sup>nd</sup> ed. Haywards Heath, Tottel Publishing.
- Brown, M. (2008) *Butterworths Insurance Law Handbook*. 9<sup>th</sup> ed. London, Lexis Nexis.
- This brings together in one volume all the legislation relating to insurance.
- There are others but I have concentrated on the most well-used titles at Kennedys.

### Specialist texts

Popular specialist insurance law texts, which deal with a type of insurance or an aspect of the insurance process, are:

### Business interruption insurance

Insurance to cover loss of profit as a result of the insured property being damaged eg a fire destroying part of a restaurant.

- Cloughton, D. (1999) *Riley on Business Interruption Insurance*. 8<sup>th</sup> ed. London, Sweet & Maxwell.
- Hickmott, G.J.R. (1999) *Interruption Insurance: Practical Issues*. London, Witherby.
- Walmsley, R.M. (1999) *Business Interruption Insurance: Law and Practice*. London, Witherby.

### Construction insurance

This is insurance to cover the multitude of things that go wrong in construction projects.

The Insurance Institute of London publishes reports on different areas of insurance. These are highly regarded. The one relating to construction is:

- Construction Insurance: Report of Advanced Study Group 208B*, 1999.
- Bunni, N.G. (2003) *Risk and Insurance in Construction*. Spon Press, London.
- Hogarth, R. (2008) *Insurance Law for the Construction Industry*. Oxford, Oxford University Press.
- Wright, J.D. (1997) *Construction Insurance: Practice, Law, Reinsurance and Risk Management*. London, Witherby.

### Directors and officers liability insurance

This is insurance when a director or officer of a company commits a negligent act or omission etc and an action is brought against the company as a result. The Companies Act 2006 and the Corporate Manslaughter and Corporate Homicide Act 2007 are introducing changes to directors' liabilities.

- Directors and Officers Liability Insurance: Report of Advanced Study Group 234*, 1999.
- Paolini, A. and Nambisan, D. (2008) *Directors and Officers Liability Insurance*. London, Informa.
- Not yet published but included as there is so little recent material about D&O insurance.
- Youngman, I. (1999) *Directors and Officers Liability Insurance: a Guide to International Practice*. London, LLP.

### Professional indemnity insurance

Interesting questions arise where new types of professionals can cause great losses but are not subject to compulsory professional indemnity insurance coverage e.g. IT professionals. Texts include:

- Professional Indemnity Insurance: Report of Advanced Study Group 228*, 2001.
- Enright, W.I.B. (2007) *Professional Indemnity Insurance Law*. London, Sweet & Maxwell.
- Powell, J.L. (2006) *Jackson and Powell on Professional Liability*. 6<sup>th</sup> ed. London, Sweet & Maxwell.
- Simpson, M. *Professional Negligence and Liability*. 3 volumes. Looseleaf. London, Informa. Two releases a year.

### Property insurance

All risks policies cover every type of loss unless it is specifically excluded in the policy. This is the broadest type of property policy that can be purchased.

- Hanson, J. (1999) *All Risks Property Insurance*. 2<sup>nd</sup> ed. London, LLP.

### Subrogation

An insurer who has paid out under a policy can acquire the right to sue a third party to recover the cost of the

claim e.g. an insurer paying a claim to a shop keeper for water damage caused to a ground floor shop could sue the upstairs tenant who caused the flood. It is not a concept limited to insurance, but insurance policies often contain some type of subrogation clause.

Mitchell, C. (2007) *Subrogation Law and Practice*.

Oxford, Oxford University Press.

Walmsley, R.M. (2001) *Subrogation and Contribution in Insurance Practice*. London, Witherby.

### International texts

Much of the litigation has an international element so books on conflict of laws are relevant. For finding out the insurance law of particular countries we use the following as well as the internet:

Centre for International Legal Studies and Campbell, D. *International Insurance Law and Regulation*. Two volumes. Looseleaf. New York, Oceana. Two releases a year.

Frederico, S. and Cousy, H. *International Encyclopaedia of Laws: Insurance Law*. Four volumes. Looseleaf. Kluwer Law International. Irregular updates.

Other useful specialist texts we have are:

Billah, M.M. (2007) *Applied Takaful and Modern Insurance: Law and Practice*. 3<sup>rd</sup> ed. Malaysia, Sweet & Maxwell Asia.

European Centre of Tort and Insurance Law and Koch, B.A. (2004) *Terrorism Tort Law and Insurance: a Comparative Study*. Vienna, Springer-Verlag.

*War Risks and Terrorism: Report of Advanced Study Group 258*, 2007.

Margo, R.D. (2000) *Aviation Insurance: the Law and Practice of Aviation Insurance Including Hovercraft and Spacecraft Insurance*. 3<sup>rd</sup> ed. London, Lexis Nexis.

Rubins, N. (2005) *International Investment, Political Risk and Dispute Resolution: a Practitioner's Guide*. New York, Oceana.

Sharp, D.W. (1994) *Offshore Oil and Gas Insurance*. London, Witherby. A second edition of this text is eagerly anticipated later this year.

### Journals

Our journals fit into two categories. Firstly, industry journals which enable lawyers to keep up to date with what is happening in a particular sector, so that they can talk knowledgeably to clients, understand their problems, and impress sufficiently to win new clients. Examples are *Building*, *Accountancy* etc. Secondly, legal journals, which keep lawyers up to date in their legal knowledge and ensure their advice takes account of the latest developments.

### Insurance industry journals

The most popular are:

*Informa's Insurance News*. A daily email from Informa with news about the insurance industry, companies, litigation actions involving insurance companies etc. All our insurance lawyers receive this daily.

*Insurance Day*. A daily newspaper-type publication for the insurance industry from Informa. Published Monday to Friday. It contains legal articles written by leading insurance law firms, which are very popular with our lawyers. Available in hard copy and online via i-Law. Copies are placed in each of our receptions and we scan each day for our daily bulletin.

An annual supplement to *Insurance Day*, *Legal Year in Brief 2006–2007: Insurance Day* is very useful when clients/lawyers want a round-up of the key insurance cases over the last year.

*Insurance Times*. A weekly publication from Newsquest Specialist Media Ltd. Available in hard copy and online. Also on Nexis.

*Post Magazine and Insurance Week*. A weekly publication from Incisive Media. Available in hard copy and online. Also on Nexis.

*Reinsurance*. Published ten times a year. Incisive Media. Available in hard copy and online. Also on Nexis.

These are kept for a maximum of two years.

### Insurance law journals

*Insurance Law Monthly*. Informa. Available online via i-Law. Very popular.

*Liability Risk and Insurance*. Monthly. Informa. Available online via i-Law.

*Insurance & Reinsurance Law Briefing*. Monthly. Sweet & Maxwell. Hard copy only.

These are kept for at least five years.

### Law reports

*Lloyds Law Reports: Insurance and Reinsurance*. Informa. Published ten times a year. The most popular series, the only one dedicated to insurance law. On i-Law.

*Professional Negligence and Liability Reports*. Sweet & Maxwell. Published six times a year. Useful for professional indemnity insurance lawyers. On Westlaw.

*Lloyds Law Reports*. Informa. Published fortnightly. On Westlaw.

*LS Law Medical*. Informa. Published monthly. Available online at [www.pjpubs.com](http://www.pjpubs.com). Useful for clinical negligence lawyers.

### **Online**

Case law is vital for insurance litigation lawyers so subscriptions to case law databases such as Westlaw and Lawtel are the most useful general resources. We subscribe only partially to Lexis Nexis, so do not make use of their case law coverage.

### **i-Law from Informa**

This is the only specialist online insurance resource. The modules available for purchase are arbitration, competition, construction, financial crime, insurance and reinsurance, intellectual property, maritime and commercial, professional negligence. For our work we take all except competition, financial crime and intellectual property.

Each module contains the full text of key books/loose-leaves in the area plus full text of journals and law reports. The insurance and reinsurance module contains:

#### **Textbooks**

- *Insurance Disputes*
- *Good Faith and Insurance Contracts*
- *Civil Jurisdictions and Judgments*
- *Compendium of Insurance*
- *Marine Insurance Law and Practice*
- *Marine Insurance Clauses*
- *Marine Insurance: the Law in Transition*

#### **Loose-leaves**

- *Law of Insurance Contracts* (Clarke)
- *Insurance Broking Practice and the Law*
- *Reinsurance Practice and the Law*
- *Professional Negligence and Liability*

#### **Journals**

- *Insurance Day*
- *Insurance Law Monthly*
- *Insurance Regulation and Accounting*
- *Liability Risk and Insurance*

#### **Law Reports**

- *Lloyds Law Reports*
- *Lloyds Law Reports – Insurance and Reinsurance*
- *Lloyds Law Reports – Professional Negligence*
- *Reinsurance Law Reports*
- *Marine Insurance Legislation*

It is possible to search across all material within your subscription, or all material in a module, or search within a particular publication/s or type of material e.g. cases. Lawyers can add notes to documents, save documents to folders and also set up alerts to be notified when new content for a particular publication is added to i-Law. One of the practical advantages to us has been that we can now email full pdf copies of new issues of journals directly to the lawyers, so doing away with the need to circulate the hard copy with all the problems of delay, loss etc. We did find it necessary to attend team meetings to demonstrate how to search, although this was partly a promotional exercise as well. We also wanted to stress to the lawyers that i-Law should not be seen as a one-stop shop, because some of our most well-used sources won't be on there, as they belong to other publishers and so they still need to refer to the books, and other sources as well!

### **Alerting services**

Each day our insurance lawyers receive Informa's *Insurance News*, abstracts/full text of key articles from *Insurance Day*, depending on their choice, plus relevant cases added to Lawtel in the previous 24 hours. We also scan the Association of British Insurers site and look at other general alerters, *Financial Times* and *The Times* for relevant content. The email weekly *Lawtel Personal Injury Bulletin* aids our defendant personal injury/clinical negligence lawyers and we produce a monthly round-up of professional negligence developments for our professional indemnity lawyers. Current awareness does have to be an amalgam of material taken from various places, as there is no one-stop shop for insurance litigation developments.

### **Policy wordings**

These are the clauses which make up insurance policies. Insurance wordings are important when parties disagree over the meaning of a policy e.g. within a professional indemnity policy a policy excludes cover for non-professional services, but the term "professional services" is not defined and a dispute arises over whether plumbers provide professional services. Here it can be useful to look at other similar policies where such a term was defined as well as case law, texts etc.

Xchanging provides access to the Model Wordings Library, a central repository of over 14,000 approved wordings and associated documents created by the London Insurance Market. It is possible to subscribe to the database or, as a cheaper alternative, subscribe to their helpline whereby individual wordings can be obtained at low cost. We do the latter and find it sufficient for our needs. Insurance wordings can also be found in some insurance texts or obtained directly from some insurance bodies.

### Insurance directories

Hedges, J. (2007) *Insurance Directory 2007*. London, Incisive Media. The larger of the two.  
*Insurance Day London Insurance Market Directory 2007*. London, Informa.

### Conclusion

I hope this article will have demystified the work of insurance litigation firms and will help information professionals who have to provide a service in this area now

or in the future. Insurance law is constantly changing as new risks emerge e.g. bird flu and their coverage or exclusion in insurance policies will provide plenty of work for litigation lawyers in the years to come. The Law Commission is currently undertaking a review of insurance contract law, which will lead to further changes in the relationships between insurer and insured. I have found the work at Kennedys to be both interesting and to involve more of a human aspect than might at first be imagined. I would encourage information professionals to embrace insurance litigation with enthusiasm if it comes their way.

### Biography

Hilary started her career at Leeds University Faculty of Law Library providing a service mostly to undergraduates. On qualifying she moved to Slaughter and May where she chartered. Almost ten years at the Law Society Library followed including posts as Electronic Sources Librarian and European Union Librarian. She moved back to the private sector in 2000 as Information Manager for Kennedys, a medium sized firm in the City.

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# A Mystery Unravelled: the Records of City of London Livery Companies

**Abstract:** Philippa Smith gives a brief introduction to the records of the City of London livery companies held by the Manuscripts Section of Guildhall Library.

**Keywords:** livery companies; City of London

### Introduction

The livery companies of the City of London evolved from the medieval guilds or fraternities (or “mysteries”) of the City of London. These were religious and social in origin, but many also acquired an economic function by forming links with, and eventually controlling, a particular trade or craft in the City. They derive their name from the distinctive liveries, or special costumes, worn by members on ceremonial occasions from about the 14th century

onwards. During the 15th century the right to wear a livery became restricted to an economic and social elite within each company, itself known as the livery. Membership of the livery soon also acquired political significance since it became, until 1835, the franchise qualification for electing the City’s Lord Mayor, Sheriffs and certain other officers, and its Members of Parliament.

There were also several City companies linked to a particular trade or craft which resembled the livery companies, but which never became entitled to a livery, such as the Fellowship Porters; the Tacklehouse and Ticket