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The Policyholder Review 2026

Warranty and Indemnity

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James Breese and Arjun Dhar

The W&I claims that we have been instructed on in 2025 are hard fought by insurers with some underlying coverage issues that are common across those disputes. Resolving those issues is increasingly challenging, particularly where there is limited public case law on W&I disputes. This likely reflects the realities that such disputes are largely resolved before proceedings are commenced (as HWF's market data may indicate) and that when disputes do arise, they are arbitrated.

For policyholders, a challenging claims environment continues to develop. In the last edition of this Policyholder Review we referred to recent decisions from the courts in this jurisdiction (*Finsbury Food Group Plc v Axis Corporate Capital UK Limited & Ors* [2023] EWHC 1559 (Comm) and *Project Angel Bidco Ltd (In Administration) v Axis Managing Agency Ltd & Ors* [2023] EWHC 2649 and [2024] EWCA Civ 446). Both cases were decided in favour of insurers, albeit both were very fact specific.

That trend has continued in favour of insurers globally. We refer below, for example, to the decision of the court of the Supreme Court in New South Wales, Australia, in *DTZ Worldwide Limited v AIG Australia Limited* [2025] NSWSC 12.

In circumstances where a) claims notification data from HWF shows that notifications continue to increase year-on-year; and b) only half those notifications resulted in paid claims in 2025, we expect that the landscape for W&I claims will become increasingly contested.



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Case Law – Insurance

DTZ Worldwide Limited v AIG Australia Limited [2025] NSWSC 12

In a case of the Supreme Court of New South Wales, Australia, the plaintiff, DTZ, agreed to buy a group of companies from UGL, the seller. The dispute revolved around one company, Premas, which had a facilities management contract (the “**FM Contract**”) with the Singapore Sports Hub. The FM Contract turned out to be lossmaking, and DTZ claimed losses of AUD 234 million plus interest, for breaches of warranties in the sale agreement.

The buyer alleged that the seller had breached accounting warranties by making various accounting errors and failing to record the FM Contract as an ‘onerous contract’. The buyer also alleged that the seller had breached disclosure warranties by (i) failing to disclose that the FM contract was shortly to become lossmaking; and (ii) stating that the FM Contract would contribute AUD 16 million to incremental revenue, which, without qualification, implied that the contract would contribute significantly to EBIT.

The ‘onerous contract’ issue was also relevant to the disclosure warranty as DTZ argued that the seller failed to disclose the problems with the FM Contract.

The purchase was insured under a W&I tower of insurance with a primary layer insured by the defendant, AIG, and eight excess layers. The claimant had undertaken in the sale agreement not to make any claim for a breach of warranty against the seller directly, but against the insurers directly. Shortly before trial, DTZ settled with AIG (as primary) and certain insurers in the excess layers but the claim proceeded against some insurers.

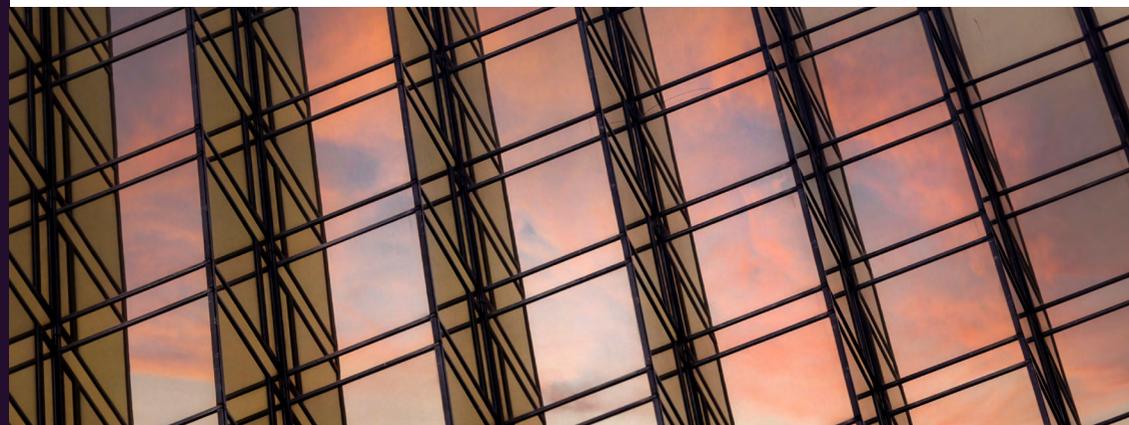
Breach of accounting warranties

The court was asked to consider extensive accounting, finance and valuation evidence. It approached the question as to whether accounting principles had been breached by considering this evidence, the (incomplete) factual evidence and usual commercial practice.

The court’s decision that there was no breach of accounting warranties is fact-specific, as we have seen with previous decisions in this area. Nonetheless, policyholders should note the extensive evidence that the court required to reach a decision, and that the exercise is made considerably more challenging where there are gaps in documentary evidence.

The ‘Onerous contract’ issue

In relation to whether the FM Contract should have been designated an ‘onerous contract’, the court undertook an analysis of accounting principles, and the sellers’ approach to other known onerous contracts. It held that the FM Contract should have been recorded as an ‘onerous contract’ only if it was more probable than not that the costs of discharging the contract exceeded the economic benefits expected to be received under the contract, and if the amount by which the costs exceeded the economic benefits could be reliably estimated. The court then concluded that the sellers did not have sufficient information to conclude this. It concluded, therefore, that there had been no breach of the accounting or disclosure warranties in failing to classify the FM Contract as an ‘onerous contract’.



Breach of disclosure warranties

The buyer's alternative case was that misleading information had been included, and relevant information excluded from, the Disclosure Materials, rendering them misleading.

The court held that there had been a breach of this warranty. The documents disclosed gave the impression that all significant issues with the FM Contract had been disclosed, when they had not been. The court also found that the impression conveyed by the sellers' answers to a particular question was that the expected benefits of the FM Contract would be achieved. When the sellers became aware that this was not the case, they should have, but failed, to correct their answers.

The court therefore found that there had been a breach of the disclosure warranties.

Assessment of damages

DTZ's primary argument was for damages to be assessed based on the value of the losses arising from the FM Contract at the time of the breach. In the alternative, DTZ sought damages based on the difference between the purchase price and a hypothetical purchase price if the facts pertaining to the FM Contract were known.

The court rejected this approach as 'convoluted', and suggested that it confused the assessment of damages for breach of warranty with the assessment of damages for misleading and deceptive conduct.

In assessing damages, the court outlined various key authorities for valuing the buyers' loss. In particular, the court quoted the recent English case of *Decision Inc Holdings Proprietary Ltd v Garbett* [2023] EWHC 588 (Ch) for its finding that unless the parties had agreed a basis for valuation, the court would have to select an appropriate basis of valuation.

In doing so, the court considered that a reasonable approach would be to assess the present-day value of the difference between the forecasted earnings and the loss due to the breach. The court preferred an orthodox approach to the assessment of damages and dismissed DTZ's more complex approaches that were to some extent based on hypotheticals.

On the court's assessment of damages, there was no recoverable loss.

Takeaways

This case highlights the challenges for disputes relating to alleged breaches of accounting and financial warranties. Policyholders will be required to clearly and persuasively evidence the breach of accounting misstatements and illustrate how the breach is causative of loss. Gaps in evidence will present risks to policyholders if litigation arises.

There are also lessons to be learned for buyers and sellers when it comes to disclosure warranties. For sellers, it is imperative that all relevant material is disclosed. For buyers, some comfort may be taken from this decision given that the court found that there had been a breach on these facts despite there being some partial, albeit misleading, disclosure. In our experience, fraught disputes arise under buy-side W&I policies where at least some disclosure has been provided by the sellers, as W&I insurers will (rightly) seek to explore the extent of that disclosure including what is and is not represented by it, and what the buyer understood from it, or could have understood from it.

Case Law – Non-Insurance

Inspired Education Online Ltd v Tom Crombie [2025] EWHC 1236 (Ch)

Last year's Policyholder Review spotlighted the Scottish case of *Drax Smart Generation Holdco Ltd v Scottish Power Retail Holdings Ltd* [2024] EWCA Civ 477, which highlighted the importance of paying attention to time limits, notification provisions and other procedural obligations in the Sale and Purchase Agreement ("SPA") and other key contractual documents. This case is a reminder of the same principles.

In this case, the defendant, Tom Crombie, sold his education business to an established group of companies. The parties had agreed that the purchase price would be calculated by reference to the completion accounts, enabling the parties to adjust the total agreed amount payable under the contract based on the company's financial performance at the time of closing.

The buyer claimed against Mr Crombie for breach of warranty arising from his conduct in emails. The seller counterclaimed against the buyer for failing to pay additional sums due under the completion accounts calculations.

The seller had challenged the buyer's completion account calculations via email. The core issue was whether the seller had fulfilled the notice requirements specified in the contract. The buyer never responded to this email, instead indicating in its letter of claim that the completion accounts were deemed agreed because the buyer's communication failed to comply with the notice requirements under the SPA.

The court rejected the buyer's argument, holding that there was a difference between the formal requirements for "any notice" given under the SPA, and the requirement to "notify" the purchaser of any dispute over the preparation of the Completion Accounts.

Learning Curve (NE) Group Limited v Richard Huw Lewis and Anor [2025] EWHC 1889 (Comm)

This was a case around the sale of AP Cymru Limited, a company that provided education and training to young people, particularly through military training and apprenticeship courses.

The key issue was that after the purchase, the purchaser discovered that APC had overclaimed more than £1 million in funding from the Education and Skills Funding Agency ("ESFA"). The purchaser claimed damages for breaches of various warranties, including a warranty that APC had complied in all material respects with funding rules.

The key issue in this case was whether the purchasers could claim damages for breaches of warranty despite the existence of a specific indemnity under the contract to enable a clawback of overclaimed sums from the ESFA.

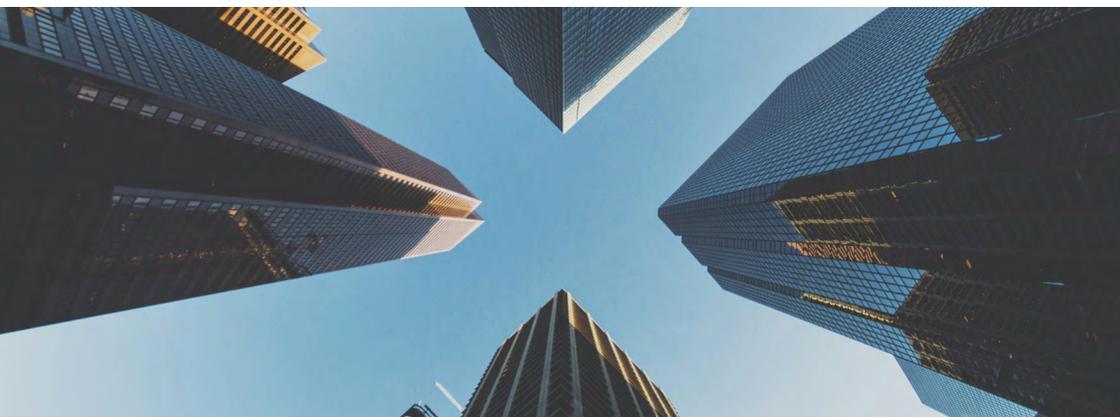
The court rejected the sellers' argument that the existence of a specific indemnity implied a term that precluded the purchaser from claiming for a breach of warranty. It did so as a matter of construction, holding that, among other reasons, the terms were comprehensive and negotiated, leaving no room for implying a term. As a result, the buyers were not restricted from bringing a claim either for breach of warranty or indemnity, though they were, of course, unable to recover more than the actual loss.

Comment

We commenced this chapter by referring to some of the market dynamics that may affect the handling of W&I claims over the coming years. Data from HWF Partners arguably supports the view that it is becoming an increasingly contested market, and the case law does not make the position easier.

Policyholders will therefore be well-advised to take note of the authorities that are directly or indirectly relevant to the issues that arise in W&I claims. There is an expanding list of common law authorities that have been decided in favour of insurers, but these at least provide useful lessons for policyholders and their advisers to learn from when presenting new claims to insurers. There is clear insight as to the approach that the courts are likely to take when determining coverage under a W&I policy, even though each claim will obviously turn on its own facts and the strength of the evidence.

It is also important that provisions in the SPA are clear as to the requirements of the parties, and what is intended by those provisions. While this is unsurprising, the cases above demonstrate the importance of ensuring that the SPA achieves this to avoid the risk of issues arising. Policyholders under W&I policies risk even greater difficulties where coverage under a W&I policy will turn on the construction and interpretation of the policy alongside the provisions in the SPA.



Meet the team

Aaron Le Marquer Head of Policyholder Disputes

With over twenty years' experience in insurance law on both the policyholder and insurer side, Aaron is a leading advocate for policyholders in diverse sectors including financial services, hospitality and retail, energy and construction, and sports and entertainment. Known for leading a series of high-profile Covid-19 business interruption test case litigation in recent years, he is experienced in all commercial lines of business, including business interruption, directors and officers, professional liability, cyber, environmental risks, and construction. Aaron spent eight years practising in the Asia Pacific region and is particularly experienced at resolving international and reinsurance disputes, often via arbitration.

Aaron has been ranked as a leading insurance practitioner in the Legal 500, Chambers, and Lexology Index (formerly Who's Who Legal) since 2013. He was named as The Times Lawyer of the Week in 2023, and listed in The Lawyer Hot 100 in 2025.



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“
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Aaron Le Marquer is genuinely outstanding. ... A standout name in the market.”
Legal 500 2026

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Chloe specialises in insurance coverage and professional negligence. Having previously acted for insurers, she now acts exclusively for businesses and individuals in high-value disputes against the insurance market and the financial and professional services sectors. Chloe has successfully recovered significant funds for clients across insurance lines, and has represented clients in disputes spanning a number of jurisdictions (including the United States, Canada, South Africa, Mauritius, Gibraltar, and countries across the Channel Islands and Europe).

Before joining Stewarts, Chloe advised Lloyd's and London market insurers on their high-profile market loss exposures and drafted policy wordings for existing and new insurance products. Chloe is ranked by both Chambers and Legal 500.



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“
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Chloe is wonderful to work with. She has deep expertise in her specialism and is very personable and conscientious. She is able to explain things in a clear way to non-lawyers and lawyers alike.”
Chambers 2026

James Breese Partner

James is ranked by Chambers and Legal 500 as an 'Up and Coming' and 'Next Generation Partner'. He has represented policyholders in the UK and internationally for eight years, having previously acted on the insurer-side. James uses his knowledge of both sides of the market to strategically advance policyholders' complex insurance disputes.

James' clients range from listed companies, private equity houses, asset managers and multinational enterprises, to high-net-worth individuals and directors of companies. He is regularly instructed to resolve coverage disputes under W&I, D&O, cyber, and investment management insurance policies.

Since 2020, James has also represented policyholders in the leading Covid-19 insurance litigation in the Commercial Court and Court of Appeal. James is widely regarded for his strong business interruption insurance expertise having recovered tens of millions from insurers, including for distressed or insolvent businesses.



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“
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James is easy to work with, pragmatic and clear, and he produces great results.”
Chambers 2026



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Policyholder Disputes at Stewarts

We act exclusively for policyholders in high-value, complex insurance disputes.

Our market-leading Policyholder Disputes team represents businesses in insurance coverage disputes, including cyber, financial and professional risks, construction, business interruption and property losses.

We only represent policyholders in disputes against insurers. Our team has experience acting for local and multinational clients in all sectors, including financial services, entertainment, property, construction, hospitality, retail, logistics, manufacturing, energy and sports.

We do not act for London market insurers, and so are free to pursue claims against the insurance market.

We are one of the largest dedicated policyholder teams in the UK market, and all three of our partners are ranked as leading practitioners in the main legal directories. Our team's cases have been listed in The Lawyer's Top 20 Cases and Top 10 Appeals for the last four years consecutively.

Stewarts is a litigation powerhouse, and we leverage the firm's broader resources where subject matter experts are required, including in tax, insolvency and asset recovery, securities, fraud and employment law. Our combined resources in these areas provide a unique one-stop-shop for insured companies and their directors and officers.

We regularly act in English litigation and arbitration for clients based in overseas jurisdictions with insurance placed through the London market. Our team is experienced in handling disputes with a broad international reach with a particular focus on the [US](#), and [Middle East](#) and [Asia Pacific](#) regions.

Our firm has unrivalled experience in putting together innovative costs arrangements to help with insurance disputes. The use of third-party funding, after-the-event insurance and risk-sharing fee agreements enables our clients to manage risk and litigate from a position of financial strength.



Stewarts' insurance team is one of the leading policyholder teams in the country."

Legal 500 2026



Stewarts know how to get the best possible results for their clients. The team are extremely knowledgeable and we have complete trust in their ability to handle the most complex insurance matters."

Chambers 2026

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Stewarts is the UK's largest disputes-only law firm acting in some of the most high-profile and ground-breaking cases.

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Our strength and depth rivals that of many disputes teams across the elite UK, US and international firms.

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Our reputation is confirmed by our rankings in the leading legal directories as well as The Times Best Law Firms. We are consistently recognised as a "truly client-focused outfit whose calibre and experience is second to none".

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We act for corporates and individuals in high-value and complex disputes in the UK and around the globe.



Practices

We have 15 practice areas across Commercial Disputes, Private Client Disputes and Injury Disputes.



Rankings

All of our practices are highly ranked in the Chambers and Legal 500 guides



Stewarts would like to thank the following for their contributions to The Policyholder Review 2026:

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