Legal Update: Clues from two UK decisions on the Contracts of Insurance 2024 Act

Presented by Sam Hider

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About me

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- Works in P&E and Financial Lines teams at WK.
- Experience in coverage issues (often MDBI and liability matters) and construction PI.

Today we will cover

The WIN WIN decision

- *Non-disclosure re: a nominee director*
- *Failure to pay claim in a reasonable time*

The Clarendon Spa Decision

- *Waiver in a proposal form*

Possible application to NZ

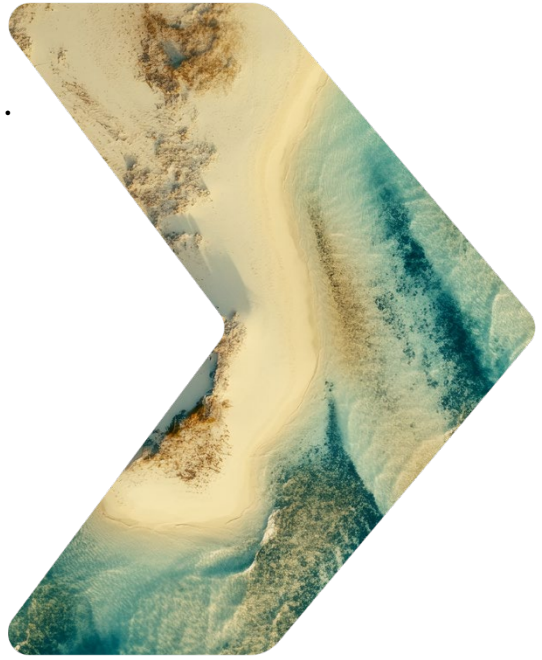
Case One: *Delos Shipping SA & Ors v Allianz Global Corporate and Specialty SE & Ors* [2024] EWHC 719

"Illegal parking": just a "metaphorical slap on the stern"?

- Insured under a war risks policy.
- "Parked" in Indonesian waters.
- 20 vessels boarded.
- Crew arrested and vessel detained.
- Vessel eventually released but sent to Bangladesh shortly after.

The Claim

- No issue that the WIN WIN was a constructive total loss
- Insurers defended the claim on four grounds:
  - The detainment was not fortuitous.
  - The 'customs or quarantine regulations' exclusion applied.
  - The insured had not complied with its obligation to mitigate loss.
  - Non-disclosure – failure to comply with the insured's duty of fair presentation.



The Duty of Fair Presentation

Wording	UK	NZ
...the insured must make to the insurer a fair presentation of the risk.	Section 3(1)	Section 29 (note: includes variations)
The disclosure required is as follows [with some exceptions]... a) disclosure of every material circumstance which the insured knows or ought to know, or b) failing that, disclosure which gives the insurer sufficient information to put a prudent insurer on notice that it needs to make further enquiries for the purpose of revealing those material circumstances.	Section 3(4)	Section 31(1)
A circumstance or representation is material if it would influence the judgement of a prudent insurer in determining whether to take the risk and, if so, on what terms.	Section 7(3)	Section 32(1)

The Alleged Non-Disclosure

- Mr Bairactaris (**B**) is a greek shipping lawyer who held a number of key roles at the companies who owned the WIN WIN.
- B was charged in 2018 along with a Mr Marinakis (**M**) in relation to heroin trafficking.
- Both B and M eventually acquitted.

Evangelos Marinakis

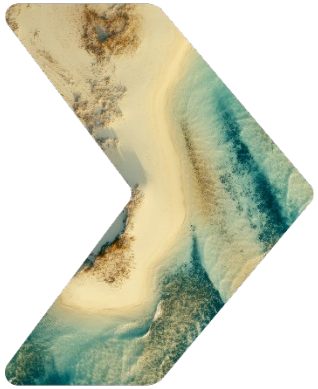
Issues related to non-disclosure

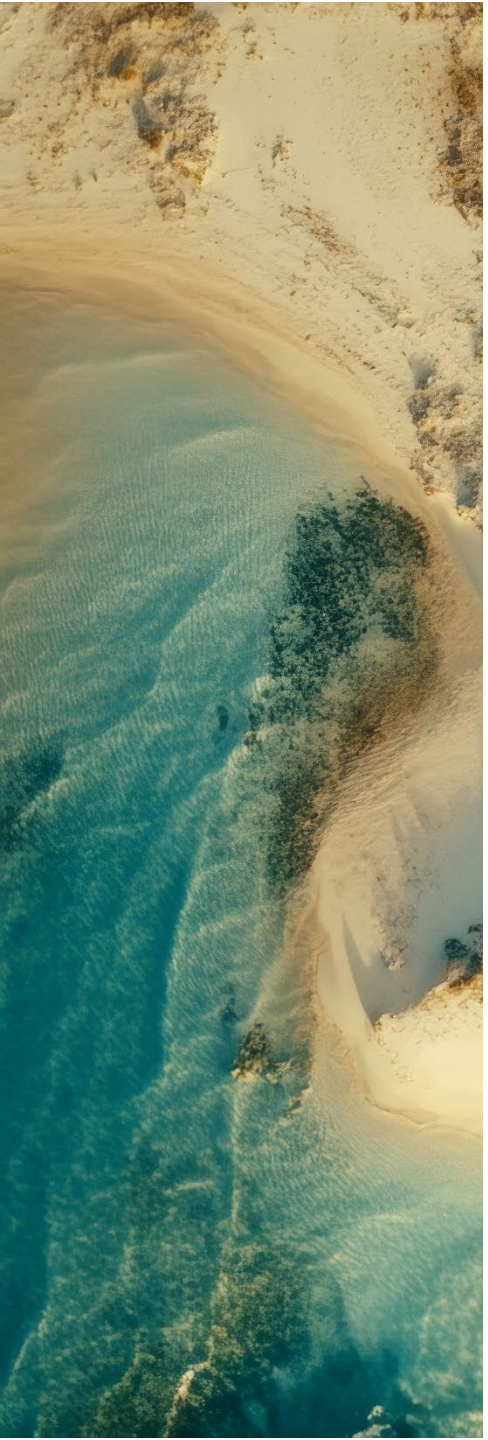
Whose knowledge

- Section 4(3) of the IA 2015 (s 38 COIA 2024) provides that a corporate insured knows what is known to:
  - The insured's senior management; or
  - Individuals responsible for the insured's insurance.

- **Constructive knowledge**
- Section 4(f) of the IA 2015 (s 40 COIA 2024) provides that an insured "ought to know what should reasonably have been revealed by a search of information available to the insured.

- **Materiality/ inducement**
- Essentially the "prudent underwriter" test.





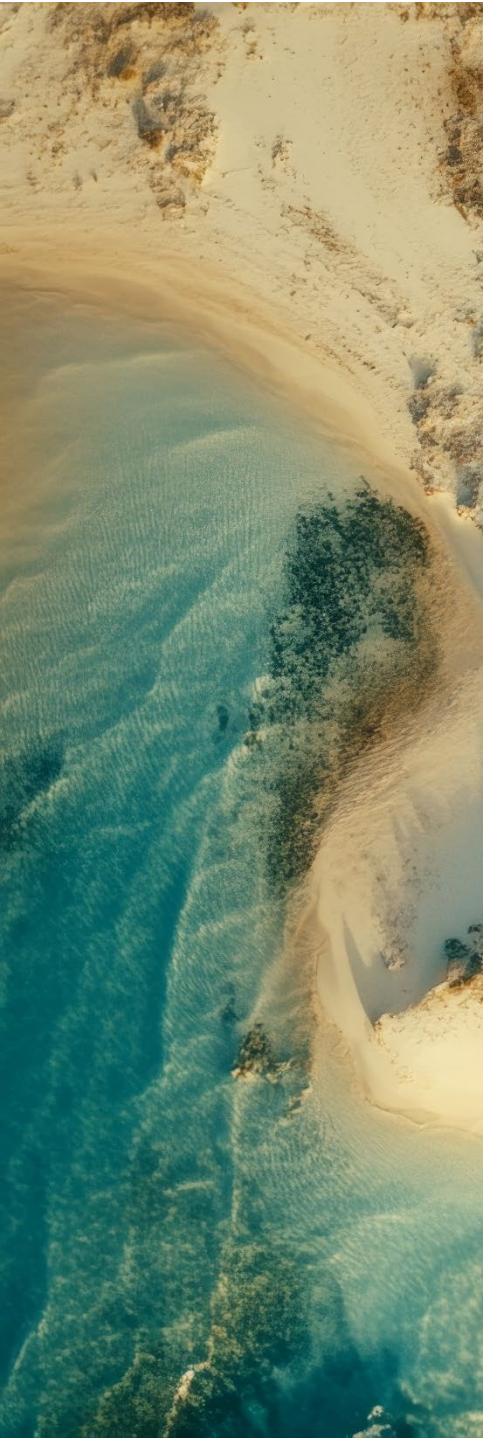
Claim for delay

Section 13A of the IA 2015 (s 66 COIA 2024)

- Provides an implied term to pay claims in a "reasonable time" as well as a damages remedy.

Court considered:

- Whether the time after proceedings have been filed counts.
- The reasonableness of the insurer's defences.
- Whether the insured could prove loss.



Update from Appeal decision on 30 July 2025

Permission granted to appeal on two issues:

- B's role; and
- the customs and quarantine exclusion.

On fair presentation, the insurer argued:

- The starting point should be that a director is part of senior management;
- If the High Court was right, the insured would have no senior management at all;
- B should have been asked about criminal proceedings; and
- The Court should not have considered whether the insured would have complied with a condition to remove B.

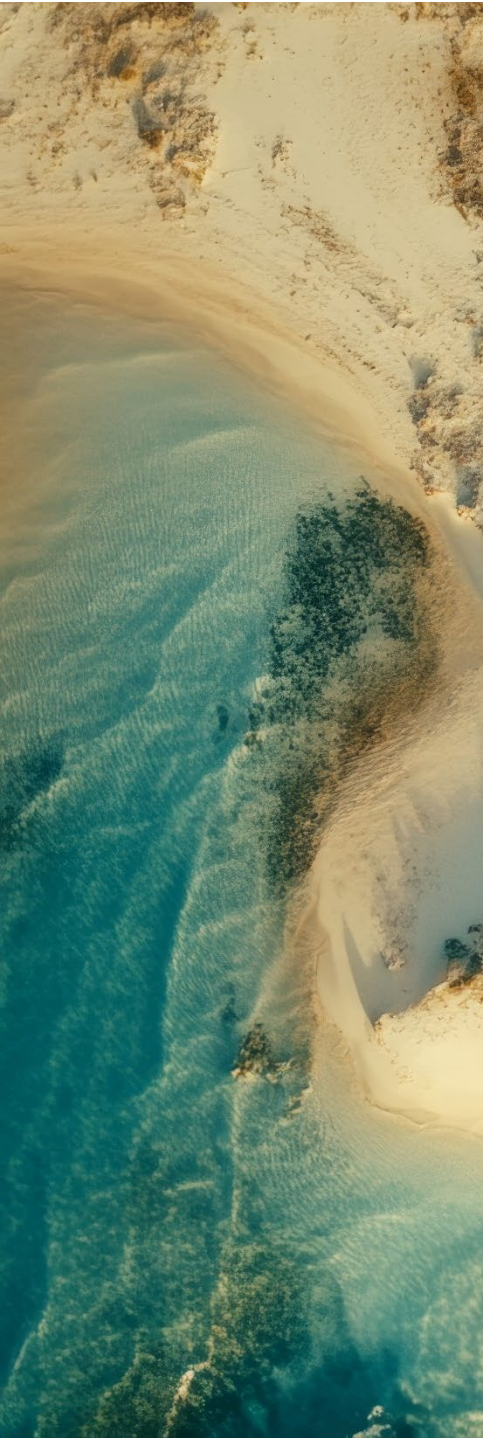
The appeal was **dismissed**.

Case 2: *Clarendon Dental Spa LLP & Anor v Aviva Insurance Limited & Anor* [2025] EWHC 267

Large fire in Leeds city centre

27TH JUNE 2021 EMERGENCY

Source: Bradford Telegraph



The (slightly) simplified facts

The building:

- Owned by an LLP.
- That LLP previously had two member companies (A and B) who entered voluntary liquidation.
- Building previously owned by: Company C (insolvent liquidation).
    - Director is now a member of the LLP.

The business:

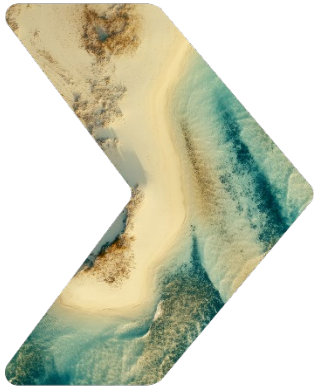
- Owned by Company D.
- Previously owned by: Same LLP as above.

- The LLP settled its claim, but Company D did not.

Relevant Section

Section 3(5)(e) of the IA 2015 (s 31(2)(e) COIA 2024) says that disclosure is not required of a circumstance:

"i*f it is something as to which the insurer waives information*"

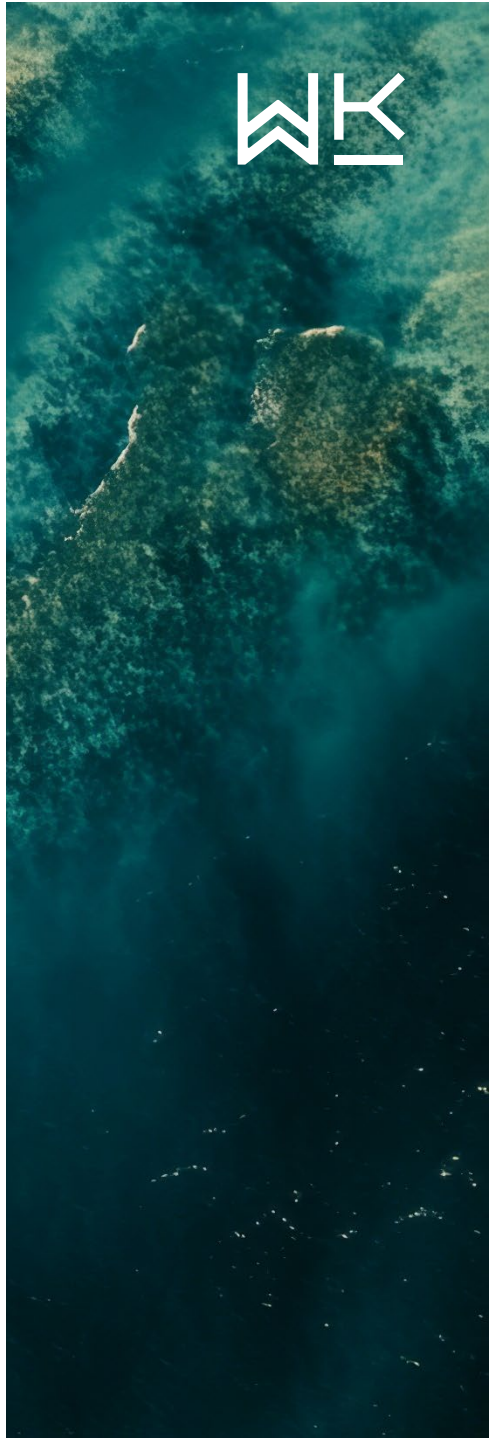


The Competing Arguments and the Result

The proposal read:

Have you or any partners, directors or family members involved in the business:	
Been declared bankrupt or insolvent, or been disqualified from being a company director?	No

- Insurer said there was non-disclosure of the insolvencies related to companies A, B and C.
- Insured applied for strike out of portions of the insurer's defence and alleged that the insured waived knowledge of insolvencies related to former partners.
- The Court agreed with the insured.



Observations by the Court

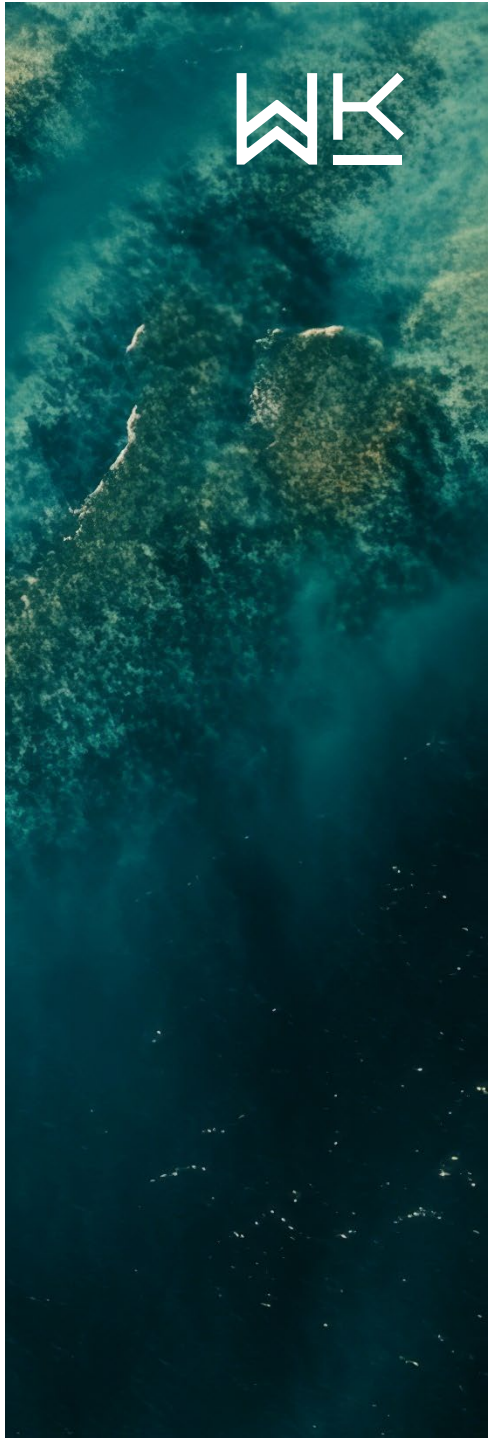
- "*The function of the court is not to punish insurers guilty of unclear and inaccurate wording, but to find what the parties intended*." [21]
- A reasonable insured would be justified in thinking that an insurer who only asks about a category or description of persons is only interested in those persons.

***Ristorante Ltd v Zurich Insurance plc* [2021] EWHC 2538**

- Where there are two objectively reasonable interpretations of a question posed by an insurer, answering either one will not be a misrepresentation.

Young and Royal and Sun Alliance [2019] SLT 622

- Waiver in documents that are not proposal forms generally needs to be explicit.



Where does this leave us?

Keep an eye on UK decisions:

- The IA is a blueprint for COIA 2024.

Fair presentation of risk issues:

- Job titles v job descriptions regarding 'senior management.'
- The limits of enquiries required of insureds.
- Waiver in proposal forms.

Delay:

- Proving delay is complex.
- Does the time after filing proceedings count?
- When are insurers justified in raising defences?

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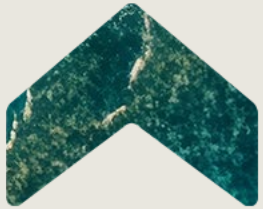

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