

GTR Magazine

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Insurers called to speed up response times

Clients are keen to see all insurers act in a "timely" manner when dealing with issues surrounding trade finance debt restructurings, says Marian Boyle, partner, insurance and reinsurance, at Denton Wilde Sapte (DWS).

She argues that those insurers who are able to respond quickly to queries about debt rescheduling or requests for consent to amend transaction documents are the most valued.

Speaking at a trade and export finance seminar hosted by the law firm DWS on April 22, she explained that having seen a number of debt restructurings over the past year, "there has been a marked difference in the response times within the insurance market, and some players had not always responded as quickly as the fast moving circumstances of debt restructuring negotiations required."

She further clarifies her comments, saying: "Lawyers tend to see only those transactions where the insurer/insured relationship was not going well, and that this is plainly not representative of the whole.

"Yet, clients valued certainty, and were concerned when delays in getting consent held up negotiations."

She noted that often insurance policy documents don't specify any time limits for responses to client enquiries about changes to transaction documents, or how quickly consent to rescheduling could be given.

This has caused some frustration on the part of lawyers and banks, "particularly when the lending is part of a syndicated transaction involving other players who are keen to get a deal to bed," she notes.

Boyle called for the market to consider amendments to policy wordings to make clear what insurers' obligations are in response to such requests. In absence of any specific wording in the policy, the only duty on insurers is the usual requirement that they should act in "good faith."

"Unfortunately, while the case law on the scope of insurers' duty of good faith is under-developed, it is clear that the only remedy for breach of the duty of good faith is avoidance of the contract," she notes.

"So in circumstances like these where there is no chance of claiming damages, insured clients are not going to walk away from their insurance policies and just get the premium back.

"What they are looking for is confidence that insurers will to work with them through the restructuring process. Insurers who adopt that commercial approach are likely to have a competitive advantage in the long run."

Responding to her observations on the insurance market made during the seminar, Anthony Palmer, deputy chairman at the insurance broker BPL Global, argued that the

insurance market had responded well to the recent financial crisis: "I recently heard a banker on a claims panel discussion who remarked that when it came to rescheduling, restructurings and workout situations, he actually found the insurers were easier and better to work with than some banks in the syndication market and a lot better than the hedge funds."

He also observed that insurance policies have been shown to be effective in the vast majority of cases.

"Last year was the acid test for insurers, and yes the policies do work; we collected claims totalling in the low hundreds of millions of dollars.

"The insurers do genuinely want to pay out on valid claims. Not to pay out is messy, takes a long time and would be bad for the reputation of the insurance market."

Speaking to **GTR**, he adds: "Moreover, BPL Global policy wordings do incorporate time limits for claims handling and payment, with interest payable if the timescale is not met by the insurer."

He said that there have been huge improvements in the wordings of insurance policies and a lot of work done to make policies Basel II compliant.

However, one recommendation he made was that often there are many insurers on one policy, and that he would like to see a mechanism for getting these insurers to work together more effectively in the event of a workout or rescheduling, "similar to the majority lenders provision in a bank syndication".

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