



Property Damage and Business Interruption Claims

Conflict free advice for policyholders

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Introduction

Wynterhill is a highly experienced niche law firm known for its work in resolving unusual and complex insurance coverage disputes across a number of specialist product lines, including property damage and business interruption ("PDBI"). Because we only act for policyholders, and never act for insurers, we are always conflict free.

When major events occur from which business critical claims result, Wynterhill is on hand to advise immediately, to help navigate difficult coverage issues, to assist in accelerating the claim process, and to seek the best possible settlement, ideally without resort to proceedings. In this brochure we tell you a little more about our services in this part of the market and why we can make a real difference.



Monitoring Insurers Preliminary Investigation

The first days or weeks after a major event can be strategically critical to the insured's business and to the outcome of an insurance claim. Decisions made by the policyholder – such as whether to appoint their own forensic expert; how to retain physical evidence; and, the approach to answering the insurer's initial questions – often have a significant effect on the subsequent course of the insurer's coverage investigation.

Insurers have legal and forensic experts immediately to hand. From the very outset they will be considering the extent of policy response closely through a kaleidoscope of potential challenges to coverage: potential breaches of the duty of fair presentation; underinsurance; insurable interest; scope of coverage; causation; duty to mitigate; other express or implied policy conditions; and, of course, quantum. It is rarely the case that an unassisted policyholder is able to contend with all the potentially significant, and highly technical, points that insurers will have under consideration by their own specialist advisers.

Some circumstances – such as a deliberate act by a third party or other unusual claim circumstances - will immediately trigger a heightened coverage investigation where every word, action or lack of action on the part of the insured will be closely scrutinised. The handling of such circumstances by the inexperienced or unwary can have unintended and unfortunate consequences.

Reservation of Rights

Insurers have the right to investigate policy coverage, but the manner of the investigation and an early reservation of rights can be the first sign that insurers have identified something that could limit coverage in part or in full. There is no legal definition of what constitutes a "reservation of rights" and no legal obligation on insurers to explain why a reservation of right has been issued. Responding to such a reservation is an opportunity for a policyholder and their advisers to proactively manage the potential coverage issue.

Handling an Interview Request

There is an increasing trend for insurers and their representatives to 'require' a policyholder to attend an interview, sometimes lasting up to several hours or more with little or no information about the purpose behind the questions. Such a request may be a warning to the policyholder that the insurer or their investigator has found something amiss regarding the claim or the policy itself. This might relate to answers provided when completing a proposal form, the circumstances surrounding the loss or something about the quantum of the claim.

The policyholder should pause to consider why an interview is required, what information has been requested and the proper extent of their obligation to comply with the request. They should also remind themselves of the detail of the policy terms and conditions in order to understand their obligations. They should fully appreciate the risks of saying something which is not accurate or true. Better still, the policyholder should consider taking early legal advice about whether to attend, and if so, on what conditions in order to avoid an allegation of failing to co-operate.

If the policyholder decides or is obliged to attend, they will require appropriate advice and representation to handle the interview so as to prevent avoidable errors that may unnecessarily complicate and extend the claim process. Likewise, there will be important considerations after the interview but before any formal record of the meeting is agreed and especially before any witness statement is signed. Legal privilege is an important principle that will only exist if the insured has legal representation.

Responding to Express or Implied Allegations of Dishonesty

Some insureds have the misfortune of being wrongly suspected or accused of a deliberate act causing the claim or of being dishonest. Some investigations start with a legitimate focus on a genuine coverage issue that has arisen and other investigations are simply overzealous in nature. Either way, when a fraud investigation is commenced, how the insured handles that investigation, will be critical to the outcome of the process and policy response generally.

Strong and cogent evidence from insurers should be required before any response is provided to allegations of dishonesty. Insureds who simply co-operate with a fraud investigation because they, rightly, feel they have nothing to hide, may inadvertently create the impression that they have acted wrongfully because they were unsure or unaware of the potential significance of unguarded answers. Facing serious allegations, being advanced by experienced professionals, is a perilous situation for any insured, however honest, in the absence of legal advice.

Our team has significant experience of representing insureds during fraud investigations, preparing for and attending formal interviews and advising on how best to respond to such assertions generally. Our team has a track record of preventing the worst from happening when such assertions are made, and of turning around the circumstances of insureds who initially elected to co-operate without the benefit of legal advice.

Responding to Other PDBI Coverage Issues – Liability and Quantum

Wynterhill has acted for a broad range of policyholders following major loss events which give rise to unusual or high value coverage issues.

We have advised on most, if not all, types of coverage disputes that typically arise in the PDBI market including: allegations of breach of the duty of fair presentation and of misrepresentation (and various untested issues under the Insurance Act); alteration of risk; underinsurance and average; insurable interest; date of damage or loss where one or more policies are involved; scope of coverage; causation; conditions which require reasonable precautions and minimum storage conditions; security conditions; allegations of dishonesty or fraud in different forms; non- invalidation clauses; notification issues; and common exclusions such as gradual deterioration or workmanship. We have also advised on a broad spectrum of quantum only issues, including: aggregation; duty to mitigate; and trends.

Most matters are resolved without a formal process. Sometimes however a dispute cannot be resolved without taking further and more formal action in which case our role is to advise about the different options available, be that litigation, arbitration or early neutral evaluation by a third party and the associated cost mitigation tools which we offer policyholders to help achieve their commercial objectives.

Arbitration and Other Forms of Dispute Resolution

Wynterhill's team has a huge amount of dispute resolution experience when it comes to PDBI and the Partners regularly litigate, arbitrate and use other forms of dispute resolution. In the current hard market conditions, it has been our experience that it more often than not takes more formal action or the threat of more formal action to achieve the client's objectives.

Alternatively, for those policyholders that have the right to refer a matter to the Financial Ombudsman, Wynterhill has experience of presenting such claims. The seeming informality of that process can lead to policyholders overlooking the need to procure the evidence necessary in order to succeed before the Ombudsman.

Working With Other Professionals and Experts

A team effort will usually be required to get a complex claim paid, and Wynterhill has experience of leading multi-disciplinary teams on behalf of our clients.

We work closely with many of the UK's leading brokers, and loss adjusters who represent policyholders, in order to provide early strategic advice to policyholders who suffer a major event. Partnering with Wynterhill allows the policyholder (via his broker) to obtain early strategic advice from a market specialist and at a fraction of the usual cost.

We have close working relationships with forensic experts, including accountants, specialist barristers and surveyors.

Our Fees

Whoever the client is, and whatever the problem, we recognise our function as coverage lawyers is to help achieve the client's commercial objectives and we have a number of methods of contingency funding that can be used, where appropriate, to help our clients achieve their goals. Every case is different and appropriate advice and commercial illustrations are provided to the client at the outset.

Charitable Donations or Referral Fees

Where brokers or other intermediaries refer us work regularly, we seek to recognise this by making a charitable donation to the referring broker's registered charity of choice, or, if preferred, we have referral fee arrangements.

Our team

The team is ranked in both the Legal 500 and Chambers & Partners.

It is made up of individuals with a diverse range of backgrounds and experience derived from acting for and against the London Insurance Market. At present there are six partners in the firm:

Dan Brooks	Dan is noted in the Legal 500 and Chambers & Partners for his advice to policyholders generally. His practise includes unusual or high value PDBI coverage disputes including alleged fraud.
Mark Dickson	Mark is an insurance lawyer with 25 years experience including PDBI claims, professional indemnity and product liability claims. Mark has advised on regulatory investigations and alleged fraud.
Chris Dunlop	Chris qualified at Kennedys in 2003 before moving to Clyde & Co, where he spent over 12 years dealing with professional indemnity claims and insurance arrangements, particularly in the construction sector.
Stuart Hill	Stuart qualified at Herbert Smith in 1993 and was a partner in Hogan Lovells' insurance disputes practice from 2002 to 2015. Stuart's matters often have an international element.
Michael Howard	Michael was awarded the Distinguished Service Medal by the CII in 2018 and joined Wynterhill the same year. His coverage practice includes construction risks, professional indemnity and PDBI coverage disputes.
Roger Jones	Roger has been advising on PDBI coverage and alleged fraud issues for over 25 years and has been involved in a number of reported decisions. He joined Wynterhill in 2020 from Kennedys.

The firm's partners are currently supported by a pool of 10 experienced consultant lawyers, many of whom have been practising in their own right for years, including Colin Wynter KC who has been involved in many high profile and important insurance disputes over the last 25 years. All of our consultants have a strong understanding of the practicalities of the insurance market, of coverage disputes, and of dispute resolution methods.

Key Contacts for PDBI



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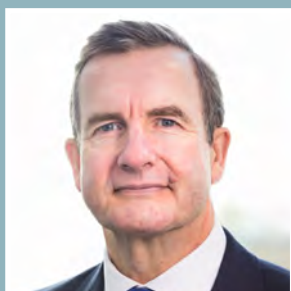
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