

Insurance

In both the United Kingdom and the United States, ZAG-S&W has extensive experience advising and representing banks, insurance brokers, investment funds, traders, professionals, and others on a wide variety of insurance issues and in insurance disputes.

Insurance & Insurance Disputes

We recognize that disputes are an unwanted disruption and a distraction. We also understand that if an insurer rejects your claim, your objective is to achieve an early and cost-effective resolution.

If a dispute arises, the insurance team at ZAG-S&W will provide a rigorous analysis of your prospects of success and strategic advice for making an effective claim. Wherever possible, we will help you resolve your claim through negotiation.

If negotiation fails, we will vigorously deploy all our experience, skill, and tenacity on your behalf in pursuing your claim. We regularly represent finance clients in dispute proceedings throughout the world, including arbitrations supervised by the London Court of International Arbitration, the American Arbitration Association, and the International Chamber of Commerce, as well as traditional courtroom litigation.

Insurance Advisory and Risk Management

Insurance plays a vital part in the risk management process of all organizations including risk/loss mitigation and risk allocation.

Yet, it is often difficult for businesses to assess accurately the likelihood that a policy will meet a claim. This leads businesses frequently to select a policy based primarily on pricing. The result is often frustration and disappointment when a loss occurs, indemnification is sought, and the claim is denied.

To avoid this outcome, you need advisors who understand not only the highly specialized insurance legal landscape but also how the insurance market operates in practice. ZAG-S&W's team are specialists in this complex area and can advise you on insurance policy drafting, risk allocation and management, and insurance claims and recoveries.

First, we understand the underlying transaction. ZAG-S&W has deep and broad experience in all manner of finance transactions. From cross-border securitizations (where we represent some of the world's largest financial institutions) to trade and export finance (where we are recognized as market leaders, having received numerous awards and industry accolades), we regularly structure the type of deals that you are looking to insure.

Second, we have equally extensive experience of the insurance market and the use of insurance as a means of risk transfer across a variety of finance activities (including project finance, receivables finance, securitization, and tax credit transactions, as well as trade and commodity finance and export credit finance).

Members of our team have been advising banks, funds, commodities traders, and trade financiers for many years on the use of insurance policies to achieve a robust risk transfer and how to limit the risks of the policy not responding. We also provide legal advice on the use of insurance as an eligible form of credit risk mitigation under various capital relief protocols, including the EU's Capital Requirements Regulations.

Our insurance advisory work includes policy, policy amendment/endorsement drafting and negotiation before, at, and after policy issuance. Because we also have a strong track record in handling policy claims and coverage disputes, we are able to provide valuable insight, and practical advice, both into the way insurers operate in a claim scenario and how courts/arbitral

panels will likely interpret policy wordings in a dispute. This experience informs the rigorous approach we take to policy drafting.

Representative Client Work - Insurance Advisory and Risk Management

- Drafting and interpretation of policy wordings;
- Negotiating pre-inception amendments to policy wording to match:
 - contractual obligations (insurance covenants); or
 - commercial imperatives (that the risk transfer is robust and insurable interests are protected to the maximum extent available);
- Assessing the interaction of insurance cover(s) for large-scale operation and maintenance, energy, technological, construction, infrastructure and outsourcing projects;
- For transactional work, undertaking insurance due diligence into the strength of the target company's insurance coverage;
- For international risks, assessing the impact of any "local" restrictions on the placing of the insurances required; the management of any regulatory risks; and the benefits and pitfalls of relying upon existing global group policies, products issued by captive insurers and "cut through" clauses;
- Taking "security" over insurance proceeds by way of assignment, charge, trust arrangements and loss payee clauses;
- The use of insurance as unfunded credit risk mitigation under the EU Capital Requirements Regulations;
- Practical implications of the changes to insurance legislation including the UK's Insurance Act 2015;
- Advising on the mechanisms available to "share" the

proceeds of insurance taken out by third parties (e.g. customers, subcontractors, and other counterparties)

Representative Client Work - Insurance Claims and Recoveries

- Representing policyholders on post-claim policy requirements:
 - Burden of proof;
 - Contractual obligations to mitigate;
 - Claims control/co-operation clauses; and
 - Subrogated rights and recovery proceedings;
- Insurance recoveries, e.g. claims arising from:
 - Credit, political risk policies, and marine cargo insurance;
 - Professional indemnity policies; and
 - Directors' and officers' (D&O) liability policies;
- Advising potential claimants in connection with the UK's Third Parties (Rights Against Insurers) Act;
- Advising banks on structures to "share" policy proceeds:
 - Loss payee;
 - Assignment of policy proceeds; and
 - Co-assurance

Representative Client Work - Dispute Resolution - Litigation, Arbitration and ADR

- Coverage disputes;
- Financial institutions and trade and export finance related disputes;

- Warranty and Indemnity claims – e.g. arising out of sale and purchase agreements;

- Contractual and professional negligence disputes – e.g. claims against
 - Wealth managers;

 - Insurance brokers; and

 - Design and build contractors, architects and surveyors;

 - Liability of company directors and officers

For further information about our Insurance practice, please visit our website at www.zag-sw.com or contact: