

Press Release

Liquidated Damages Insurance with reference to projects like Wembley Stadium - Presentation at IMIA Conference 2009, Gleneagles 16th September 2008

Richard Radevsky, director of Charles Taylor Adjusting and Oscar Treceno of Swiss Re jointly presented a paper on this topic which is often insufficiently understood and evaluated by underwriters.

Various highly problematic aspects of this cover, its exposures and claims handling were discussed. In essence, cover of Liquidated Damages is a kind of Contingent Engineering insurance to protect the, Contractor, Sub-contractor, for their contractual liabilities to pay Liquidated Damages to the principal as a direct result of any neglect, error or omission on their part or of certain fortuitous causes for which they are not relieved under the terms of the contract. Not all of this is insurable and the cover needs to be carefully defined and limited and a fair coinsurance by the Insured is typical for such cover. However, the delays and other problems experienced with the construction of the Wembley Stadium the disputes between the parties give ample cause for discussions whether such cover can be adequately be handled even if great care is taken when issuing insurance of Liquidated Damages. This example was well presented to learn from losses experienced.

See also attached newspaper clipping from Insurance Day.

INSURANCE DAY

Friday 19 September 2008

Wembley stadium: the construction project ran into difficulties despite its Australia-based contractor having a good track record in building on time and to budget



Liquidated damage cover has vanished

LIQUIDATED damages cover has all but evaporated amid soaring losses, delegates at the International Association of Engineering Insurers (IMIA) heard, writes Amy Tiernan, *Gleneagles*.

"It is easier to find Nessie than profitability in liquidated damages," Oscar Treceno, senior vice-president for property and specialty at Swiss Re, told delegates at the IMIA conference. "With liquidated damages cover you are trying to accept a risk that has nothing to do with lateral damage."

Treceno said this makes it an unusual insurance product for the construction industry as it is not associated with any physical damage. There are also issues associated with assessing risk and price correctly, as these are often based on projects the contractor has carried out before.

Wembley stadium was an extreme example of the problems associated with liquidated damages. The Australia-based contractor, Multiplex, had a good track record. "On paper, all the requirements were there," said Treceno. However, the project ran into difficulties associated

with the complex nature of the structure, workforce problems – including strikes by the workers – and the rising price of steel, causing construction to finish way behind schedule.

Richard Radevsky, director of Charles Taylor Adjusting's non-marine division, said there was a tense atmosphere at the time of the Wembley stadium construction, due to years of problematic disputes, strained relationships and pressure for quick completion for an FA Cup final. This was coupled with lots of government and press interest in the project.

Radevsky added: "Liquidated damages is different because it deals with the cost of delay. Insurers are happy to deal with the costs of delay if it is a result of physical damage [which liquidated damages is not]."

The market for liquidated damages was already dry before the Wembley loss. "The moment Wembley started the product was already dead," said Treceno. Indeed, liquidated damages cover is no longer available worldwide, as there is no market for it due to the high risk of insurers losing money.