

Dispute insurance – a guide for lawyers





“

I rate Harbour Underwriting’s level of professionalism and expertise extremely highly. On a recent matter, I particularly appreciated Rocco taking the time to understand the client’s drivers and his willingness to be flexible and as accommodating as possible. Rocco and the team were available when we needed them. We always felt supported and that the team were on our side.”

Richard Bamforth, CMS

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Contents

About dispute insurance	2
Premium payment options	2
Case studies	3-4
Underwriting criteria	5
Our team	6

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Rocco Pirozzolo leads the team and remains the go-to representative. His client service and general level of service, level of sophistication and commercial vision are very strong. He remains the go-to person to secure ATE insurance for complex and high-value litigation.”

Chambers and Partners

About dispute insurance

Commercial dispute insurance (sometimes called ‘after the event’ (ATE) insurance) provides cover against the costs incurred in bringing or defending legal or arbitration proceedings.

Under the ‘loser pays’ principle in English law, the losing party in a dispute is usually ordered to pay the successful party’s costs. Dispute insurance mitigates against this.

Dispute insurance can be taken out however a case is funded, whether the party is paying all its own bills, has involved a litigation funder or asked its solicitors to act under a conditional fee agreement or a damages-based agreement.

What are the benefits of dispute insurance?

- Dispute insurance mitigates against the risk of losing a case. Clients always believe they have a great case but as every lawyer knows, there are no guarantees in litigation. Even if a solicitor or barrister gives a case a 60% chance of success, that means they believe there is a 40% chance of losing. The client therefore has a 40% chance of spending money on their own lawyers’ fees and expenses, plus an exposure to paying the other side’s costs
- Dispute insurance is no longer limited to adverse costs. Different products and pricing can be tailored to suit the litigation
- Insurance can be used to satisfy a security for costs order
- Insurance can reduce the amount of capital a litigator has at risk
- Funding and insurance can be effective strategic partners in litigation



What cover is available?

- Adverse costs – the insured’s potential liability to pay the opponent’s legal costs and disbursements if they lose the case
- Own side disbursements – the fees of barristers, experts and advisers other than the insured’s own solicitors
- Own side solicitor’s fees – the insured’s own solicitor’s fees less a deductible, usually 25%
- Anti-avoidance endorsement/deed of indemnity – to satisfy a security for costs order
- Appeals insurance – available to claimants or defendants successful at first instance
- Damages based agreement and conditional fee agreement insurance
- Cross-undertaking in damages insurance – available to support applications for injunctive relief

Premium payment options

How are premiums calculated?

Premiums are priced by reference to the risk and dealt with on a case-by-case basis depending on the submission received. Premiums are not calculated differently because of the status of the insured such as being a corporate or litigation funder.

What premium payment options are there?

We have a flexible approach to premium payments that can be structured to suit the insured.

Common payment structures

- A deposit premium paid on inception, with a deferred and contingent premium paid from the recoveries upon a successful outcome
- Staged premiums paid in stages such as on inception, on disclosure and 60 days before trial

Who buys dispute insurance?

Dispute insurance is bought by both claimants and defendants, although a successful outcome is harder to define for defendants. It can be purchased at any time after a legal claim has started.

Dispute insurance is available to any litigator but is most typically taken out by serial litigators such as litigation funders, banks and listed companies.

It is also commonly taken out by claimants in group litigation and class actions.

“

Harbour Underwriting’s has a high level of professionalism and expertise and I always get the feeling the papers have been properly read and thoughtfully considered. They are thorough, sensible and good to work with. They are very responsive, always available and good at communication.”

Senior broker for City of London insurance broker



CASE STUDIES

Indonesian seaweed farmers' success in oil spill class action shows how dispute insurance can help secure access to justice

A class action by 15,000 Indonesian seaweed farmers in the Australian courts following an oil spill in the Timor Sea in 2009 settled for 192.5m Australian Dollars (approximately US\$129m). The action was brought with the support of litigation funding and dispute insurance to cover the defendant's adverse costs if the claim was unsuccessful.

Without the benefit of financial support in the form of litigation funding and dispute insurance, it is highly unlikely the seaweed farmers would have been able to pursue their quest for justice and damages for their loss.



Harbour Underwriting issues cross-undertaking in damages policy to help secure worldwide freezing injunction

Harbour Underwriting issued an adverse costs policy covering the claimant's potential liability to pay the defendants' legal costs should the claimant lose the case.

As part of the claim, the claimant applied for a worldwide freezing injunction over shares held by some of the defendants. We were approached to issue a policy that would satisfy the requirement to give a cross-undertaking. The policy was issued within five working days in time for the injunction hearing. The court ordered the injunction but although it had no objection in principle to using an insurance policy, there was insufficient time to agree the wording of the policy with the defendants. We expect this type of policy will become requested more often as litigators and litigation funders become aware of its availability.



CASE STUDIES

Investors settle film partnership claim brought with the assistance of dispute insurance

A group of investors brought a claim against financial advisers for professional negligence in relation to the movement of their investment in film partnership tax planning schemes offshore. Harbour Underwriting acted quickly to issue adverse costs and disbursements cover to enable the claimants to bring the claim and pursue it to settlement.



Dispute insurance helps family company beat Bentley Motors in long-running trademark battle

The Court of Appeal upheld a High Court decision that determined Bentley Motors had infringed the registered trademarks of Bentley Clothing by using identical trademarks on its clothing range. Harbour Underwriting provided family company Bentley Clothing with dispute insurance to cover adverse costs to manage its exposure if it was unsuccessful at trial and also if Bentley Motors succeeded in its appeal.

UNDERWRITING CRITERIA

To apply for a quote, a proposal form and supporting papers regarding the dispute should be assembled by the broker or party’s solicitors and provided to us.

Our underwriting criteria include the following:

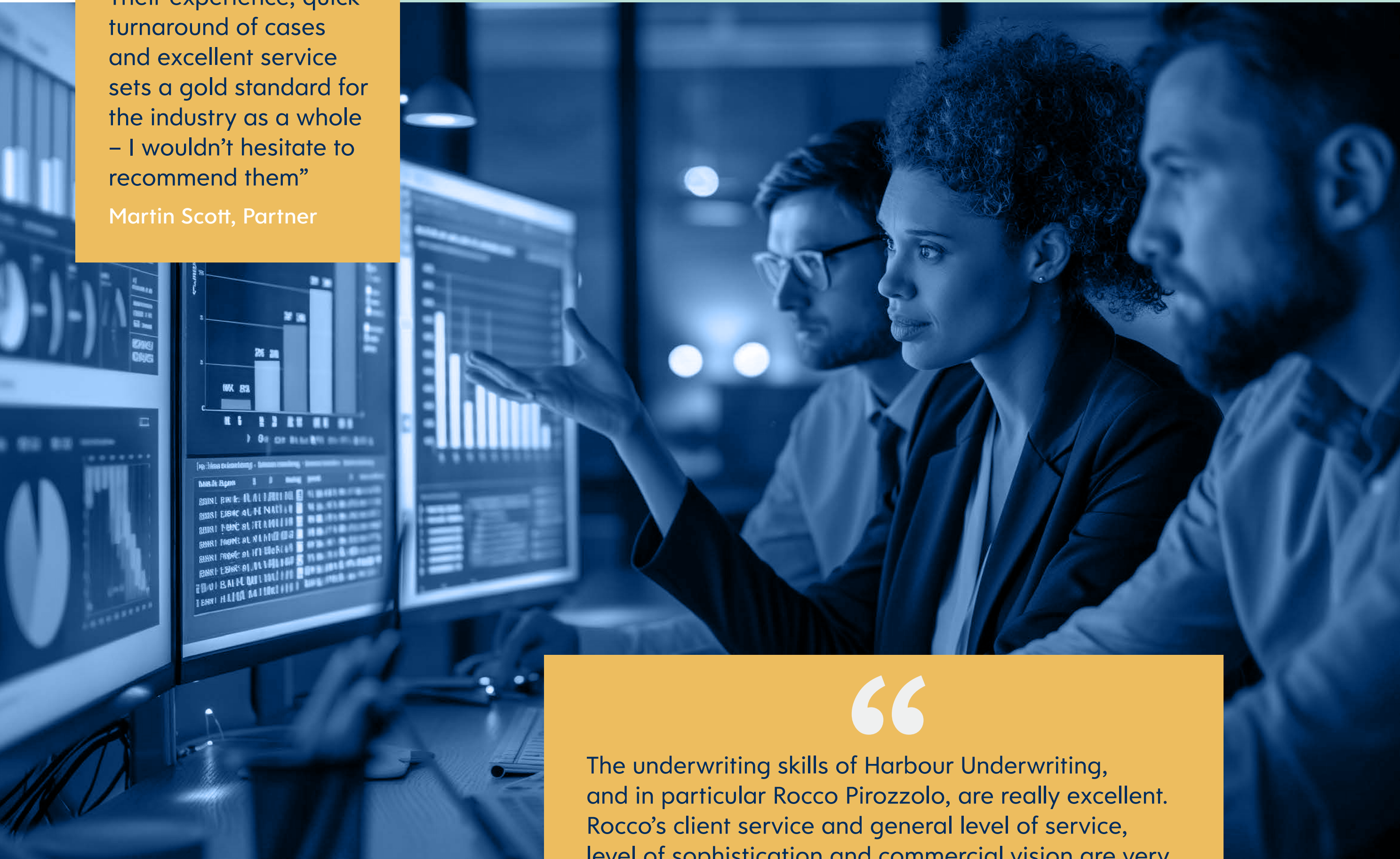
- Types of proceedings:** Commercial disputes, arbitrations, tribunals or appeals regardless of the stage reached
- Types of case:** Commercial disputes (not tax, defamation or bodily injury cases)
- Limits of indemnity:** £150,000 to £25m unless the policy is part of a co-insurance arrangement, when there is no upper limit
- Merits:** The case has good prospects of success
- Status of proposer:**
- The proposer’s legal representative(s) and any expert(s) have the requisite experience
 - The proposer is reasonable and commercial
 - The proposer or a third-party funder has the requisite funds to fund the case

Jurisdiction:

The case is connected with the UK, the Channel Islands, Australia, the Caribbean, Hong Kong, UAE and any other country where our insurance partner(s) can issue dispute policies.

Other issues:

- We will consider offering retrospective cover
- We co-insure, offer excess insurance and top-up insurance
- Timing – we may refuse to consider an application if it is made too close to trial
- We can consider bespoke requests for insurance such as for a portfolio of cases



“
Their experience, quick turnaround of cases and excellent service sets a gold standard for the industry as a whole – I wouldn’t hesitate to recommend them”
Martin Scott, Partner

“
The underwriting skills of Harbour Underwriting, and in particular Rocco Pirozzolo, are really excellent. Rocco’s client service and general level of service, level of sophistication and commercial vision are very strong. Rocco is a first-class underwriter and one of the most experienced and able in his field.”
Chambers and Partners

OUR UNDERWRITING TEAM

Our underwriters are always happy to discuss a case before submission and can give you a quick answer at the initial review stage. Please contact us for more information.



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“

The level of professionalism and expertise of Harbour Underwriting was excellent. I spoke to Rocco Pirozzolo on the phone and he immediately understood the significance of the claim to the claimant and put the insurance in place very efficiently.”

Mark Wilson, Gateley Legal

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