

11th AIDA Europe Conference Report

Senara Eggleton*

1. 11th AIDA Europe conference: ‘Navigating the Insurance Landscape: Regulation and Innovation in the European Insurance Markets’¹

This is a report of the 11th AIDA Europe conference, hosted by University Carlos III of Madrid on 29 and 30 May 2025. This report is based on personal conference notes. It aims to provide a fairly comprehensive, albeit not completely comprehensive, account of the conference sessions that I attended for the benefit of the readers of the BILA Journal.

The theme of the conference was regulation and innovation in the European insurance markets. To this end, it sought to unpack how the insurance market is reacting to the challenges of the changing world, and whether it is reacting fast enough to keep up with rapid climate change, technological innovation, societal trends and political realignment.

More generally, in the context of increased mobility for the creation of new structures for prevention and recovery, the means to communicate with clients as well as the risks the clients are facing are evolving: are there universal trends or should individualised needs be the focus?, what is the way to effectively encompass both universal and individualised needs?, is regulation moving to address the changing model of insurance, and is technology a useful tool?.²

2. Day one: presentations

2.1. Welcome/Introduction

2.1.1. Speakers

- Maria Luisa Muñoz Paredes, Co-Chair AIDA Europe
- Rafael Illescas Ortiz, Chair SEAIDA
- Carlos Estebenet, President AIDA World
- José Antonio Fernández, Director-General of Insurance (Spain)
- Mirenchu del Valle Schaan, Chair UNESPA (Spain)

2.2. Key-note speaker

2.2.1. Speaker

Fausto Parente, Executive Director, European Insurance and Occupational Pensions Authority (EIOPA), Frankfurt, Germany

2.2.2. Summary

The speaker highlighted the need to find the right balance between regulation – and appropriate supervision – and innovation, bearing in mind the competitive nature of Europe. Indeed, there is no mandate to think about competitiveness, but it is important to see the topic in context and EIOPA wants to help on simplification. In the context of simplification, there is a need to avoid forgetting why we regulate: to help and protect people and to guarantee financial stability. However, good regulation does not hinder growth and development but rather works to support it. Is what we have today adequate and fit for purpose, or is there too much regulation?

In particular, the speaker noted that we cannot avoid saying that the EU Artificial Intelligence Act is important: it is the first effort to regulate the phenomenon.³ Initially it was said that there was no need to include insurance, because it is already a regulated industry, but nevertheless it does mention insurance. The speaker noted that it is

* Yates Glazebrook Fellow, Jesus College, University of Cambridge.

¹ https://aidainsurance.org/events/aida-europe-conference-2025_2025-05-29 last accessed June 2025.

² ‘Final programme: 11th AIDA Europe Conference’, https://aidainsurance.org/events/aida-europe-conference-2025_2025-05-29 last accessed June 2025.

³ <https://www.europarl.europa.eu/topics/en/article/20230601STO93804/eu-ai-act-first-regulation-on-artificial-intelligence#ai-regulation-in-europe-the-first-comprehensive-framework-4> >last accessed June 2025.

a difficult landscape: how does the Artificial Intelligence Act interact with the legislation that already exists here, for example? EIOPA has tried to help the industry – there was a recent public consultation⁴ – by giving guidance to industry supervisors about how the legislations can interact. In the consultation paper, it is noted that Article 17 of the IDD stipulates that insurance distributors shall always act honestly, fairly and professionally in accordance with the best interests of their customers.⁵ The speaker referred to the “mystery shopper” as a tool for conducting supervision. He noted that one of the main outcomes of the shopping exercise was that when a shopper was going to buy a fake investment and sometimes not given all the mandatory information, in some cases they were offered the product that matched their needs despite not all the regulatory requirements having been met. Conversely, in other cases where the distributor followed every step of the regulatory framework, the shopper was not offered a good product matching their needs. This tells us that in the area of consumer protection, perhaps the so-called investment ‘journey’ is not necessarily working as well as intended.

EIOPA are also acting to identify ‘simplification’ and the areas to work on for the sector.⁶ The speaker stressed that simplification and deregulation are discrete concepts: if we decrease the capital requirement, this is not simplification. We must pay attention to how much we decrease regulation as it may mean that the sector in general will be a bit less robust. Moreover, when it comes to simplification, there is a need to be accurate. Good regulation must fit the needs of the sector. Here, the speaker referred to the “Less is More” report which contained proposals to simplify and improve European rule-making in the financial services sector.⁷ Additionally, there is a need to defend the single market; it is agreed that the competitiveness of Europe must be increased, but this means that you need a set of rules equally implemented and supervised in every country. Assuming that regulation can be simplified at the European level, the speaker does not want to see a return to a national-specific approach because this will destroy the single market. A further report will be published in June 2025.

2.3. Plenary session 1: The Future of Insurance Law in Europe: Innovation and Regulatory Reform

2.3.1. Moderator

Pierpaolo Marano, Co-Chair AIDA Europe, Prof. Dr. Università Cattolica del Sacro Cuore, Milan, Italy / University of Malta, Malta / Latvije Universitāte, Riga, Latvia

2.3.2. Speakers

- Fausto Parente, Executive Director, European Insurance and Occupational Pensions Authority (EIOPA), Frankfurt, Germany
- Nic De Maesschalck, Director, BIPAR, Brussels, Belgium
- José Manuel Inchausti Pérez, Vice-Chair Mapfre, Spain
- Monica Mächler, Former Member of the Board, Zurich Insurance Group; Chair, Advisory Board of the International Center for Insurance Regulation, Goethe University, Frankfurt am Main, Germany

2.3.3. Summary

This session explored the following issues:

- Consumer protection and conduct regulation
- Integration of insurance with broader financial regulation

⁴ https://www.eiopa.europa.eu/consultations/consultation-paper-and-impact-assessment-eiopa-opinion-ai-governance-and-risk-management_en <last accessed June 2025>.

⁵ EIOPA, ‘Consultation paper and impact assessment on EIOPA’s Opinion on AI governance and risk management’, https://www.eiopa.europa.eu/consultations/consultation-paper-and-impact-assessment-eiopa-opinion-ai-governance-and-risk-management_en [3.11.] <last accessed June 2025>.

⁶ EIOPA, ‘Bolder, Simpler, Faster: EIOPA’s views for better regulation and supervision’ (8 April 2025) <chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://www.eiopa.europa.eu/document/download/3fb7bfca-761b-448c-8ccf-8f8136ed6a88_en?filename=Note%20on%20EIOPA%E2%80%99s%20views%20for%20better%20regulation%20and%20supervision.pdf> last accessed June 2025.

⁷ European Association of Co-operative Banks, <https://www.eacb.coop/en/studies/eacb-studies/less-is-more.html> last accessed June 2025.

- International developments and alignment
- Sustainability of insurance models
- Innovation and insurtech regulation
- Supervisory convergence and EIOPA's role

To focus on one example, Nic De Maesschalck said that there are three issues on the agenda: regulatory change, the digital and AI impact on the sector, and the changing geopolitical landscape. He posted the question: what is the role of insurance in natural disasters? There have been an estimated \$900 billion in losses in the last few years, and about 70% of these were not insured, such that this figure represents only 30% of the damage. Estimated losses to be paid will be \$4.5 billion – a third of balance sheet losses accumulated over the years. He then focussed on “how”, “who” and “what”. With respect to “what”, for example, the speaker highlighted that capital efficiency and flexibility remains key – historical data often is not available which makes strategies to identify risks and mitigate them more difficult. Moreover, it is important to set the issue into strategic context. Zurich, for example, puts the customer at the centre of everything. As the customer is front and centre, they deserve assurances regarding data protection and the responsible use of AI. This principle applies to all AI developments. Therefore, all of this together serves as the overall context to drive innovation in a way which is responsible, and to drive innovation in the direction of regulation being targeted towards a responsible and innovative use.

How can regulation be simplified? Nic responded that one solution is to leave IBD as it is, but to introduce more powers for cross-border situations to level the playing field. There is a need for good products, and we count on supervisors to make sure there are good products and to be competitive. An entity which is fully compliant and needs to compete with non-compliant entities is not good for competition or us. In terms of liability, supervisors always look at the regulation purely from a supervisory perspective but in parallel there is liability – if you give incorrect advice to someone, this is an extra factor. For horizontal rules, clients also expect providers to be up to speed when providing their service – if you experience an issue, you need to take to someone who understands the issue. From an IFF perspective, therefore, simplification can be complex: it can mean changing systems and procedures. The best thing to do is to keep the framework there is and give more powers to supervisors to use the framework and tools that are there.

2.4. Plenary session 2: From Automation to Protection: Regulating AI and the Evolving Cybersecurity Landscape

2.4.1. Moderator

Maria Luisa Muñoz Paredes, Co-Chair AIDA Europe, Prof. Dr. University of Oviedo, Oviedo, Spain

2.4.2. Speakers

- AI uses applied to insurance: Luca Giordano, Head of Regulation at Unipol, Bologna, Italy
- The role of the AI Regulation in this area: Arthur Hilliard, Senior policy advisor, Conduct of Business, Insurance Europe
- The risks involved in the use of AI in other industries and its (insurance) coverage: Belén Vélchez, Head of Financial Lines & Intellectual Property/IA Practice, Aon Spain, Madrid
- Cyber risks and their (insurance) coverage: Peter Wedge, Director of Cyber Wordings, Gallagher Re, Zurich, Switzerland

2.4.3. Summary

Luca Giordano posed a series of questions to address the issue. Luca began by asking how pervasive AI adoption is in the EU insurance sector. The finding was that most insurers are using AI selectively, rather than systematically, and that AI based image-recognition can assess damage to bring automatic liability checks and settlement calculations. The speaker asked why so many insurers struggle to scale AI initiatives effectively? Here, a need for cross-functional teams was identified. The evidence demonstrates that many insurers struggle to use AI technology effectively and that the challenge now is less about the technology itself but in the difficulty in using it effectively. A holistic approach is needed.

Next, the speaker asked how precise risk assessment can be achieved with AI while ensuring fairness? Here there is an increased concern about financial exclusion. AI is a tool and power that insurance companies have to analyse risk with higher granularity – even at individual level (idiosyncratic risk) there is a concern that the

augmented granularity could end up meaning financial exclusion. The speaker stressed that the risk assessment process is one process and that pricing the risk is another process.

On the question of whether AI in insurance can maintain trust amidst ethical concerns, it was noted that AI systems often face a trade-off between performance and explainability: more performance often equals less explainability. When AI systems operate as ‘black boxes’, insurers encounter difficulties in providing adequate explanations for certain outcomes, such as the denial of coverage or the determination of premium rates, as well as limitations in identifying and mitigate potential model failures.

Interestingly, it was noted that customers generally prefer human interactions as opposed to AI interaction, particularly - although not exclusively - regarding life insurance. Indeed, that there is a fundamental benefit from human interaction is not to be understated.

When it comes to compliance, is ‘ticking the boxes’ of compliance enough to ensure reliable and fair AI? It was noted that the current AI regulatory frameworks strongly emphasise prescriptive requirements.

To conclude, the key takeaways here are that AI is reshaping the future of the sector. However, for it to reach its full potential, it needs more tools.

Next in the panel to address the audience was Arthur Hilliard. Arthur started by asking what AI is and referred to the definition in Article 3(1) of the Artificial Intelligence Act:

AI system’ means a machine-based system that is designed to operate with varying levels of autonomy and that may exhibit adaptiveness after deployment, and that, for explicit or implicit objectives, infers, from the input it receives, how to generate outputs such as predictions, content, recommendations, or decisions that can influence physical or virtual environments.⁸

Here, he noted that it is not intended to cover simpler traditional software systems or programming approaches. However, what about long-established techniques and models in insurance? What is included from an insurance perspective? High-risk AI systems are included,⁹ but there is a question mark as to how to interpret this provision. For example, which products fall under the scope of life and health insurance, and what about accident insurance and disability insurance? Moreover, are there different interpretations at national level regarding which products should be categorised as health or life insurance? What exactly should be understood by ‘risk assessment’? How narrowly or broadly might the references to ‘pricing’ be understood by regulators?

Arthur then asked what is exempt from high-risk classification before moving on to examine the obligations for high-risk AI systems – which can be found in Articles 8 to 15.¹⁰ He noted that the fundamental rights impact assessment (Article 27) refers to banking and insurance providers, too¹¹ - these will have to carry out a fundamental rights impact assessment prior to deploying a high-risk AI system. The AI office has been tasked with developing a template to facilitate compliance – this could be an important step which helps to lessen the burden to some extent, and we will have to see how this looks in progress, and whether EIPOA wants to make a comment.

On supervision and enforcement (Article 74),¹² the EU financial services legislation includes internal governance and risk-management rules and requirements which are also applicable when regulated financial institutions make use of AI systems.

The next steps comprise a phased implementation timeline. There are Commission guidelines: Mandate for European Commission guidelines (Article 96).¹³ On the issue of re-opening of the AI Act, the question posed

⁸ EU Artificial Intelligence Act, < <https://artificialintelligenceact.eu/article/3/>> last accessed June 2025.

⁹ EU Artificial Intelligence Act, Annex III, < <https://artificialintelligenceact.eu/annex/3/>> last accessed June 2025.

¹⁰ EU Artificial Intelligence Act, < <https://artificialintelligenceact.eu/article/3/>> last accessed June 2025.

¹¹ EU Artificial Intelligence Act, Article 27: Fundamental Rights Impact Assessment for High-Risk AI Systems < <https://artificialintelligenceact.eu/article/27/>> last accessed June 2025.

¹² EU Artificial Intelligence Act, Article 74: Market Surveillance and Control of AI Systems in the Union Market

< <https://artificialintelligenceact.eu/article/74/>> last accessed June 2025.

¹³ EU Artificial Intelligence Act, Article 96 < <https://artificialintelligenceact.eu/article/96/>> last accessed June 2026.

was whether to tweak or not to tweak? There is a political dimension to this, together with criticisms of the AI Act and the withdrawal of the AI liability directive. The European Commission's 'simplification' agenda has come under criticism recently, mainly from the United States on the restrictive approach and the impact this will likely have on innovation. The speaker suggests that small tweaks are likely but not a reopening and that there will be no major changes.

A consultation paper and impact assessment will document EIOPA's opinion in the shape of a draft opinion on AI governance and risk management in the insurance sector. The public consultation ran from 12 February to 12 May 2025. Its objective was described as: to provide further clarity on the main principles and requirements foreseen in insurance sectoral legislation that should be considered in relation to non-high-risk AI systems.

In conclusion, the speaker turned to the future of AI regulation. Firstly, is the AI Act fit for purpose? Here, there are technological, political and policy developments to consider: what is the pace of the change, the broader geopolitical context and should there be more focus on innovation and investment, respectively? Secondly, what about AI in the financial sector? It was noted that there are no plans for specific regulation at his stage. Parliament has looked at the issue of whether there is a need for specific rules on AI in the financial sector and there are plenty of rules existing in the insurance and financial sector, in particular. The issue could come back in the future – with more of a focus on the financial sector and the relevant rules that need to apply there.

Belén Vilchez examined how you can protect your company from the use of AI: are companies insuring their businesses against AI risks? The speaker highlighted that AI is more than just technology – it is an intangible asset. Indeed, AI risks are increasing in frequency. In the last 5 years, the speaker reported that more than 150 claims have been opened in US. Turning to AI insurance and coverage gaps, it was noted that across an AI model, there are many companies involved: the creator of the tool, the developer, and the implementor. The market is prepared: there are solutions. However, the challenges of AI insurance were summarised as being: (1) affirmative cover, (2) AI exclusions and/or submission requirements, (3) silent cover, (4) AI stand-alone insurances. The latter speaks to AI specific insurance, ie new AI coverage options, potentially filling coverage gaps for policyholders developing Generative AI.

Finally, Peter Wedge addressed the audience and gave a broker's perspective. He started by unpacking an accumulation event: how much will it cost - because this has to be explained to shareholders. The drivers of large cyber losses have shifted beyond ransomware to a multi-peril threat landscape. Indeed, professional negotiators are going to a different company every day: while the company changes, the criminals and the problem do not. Moreover, ransomware has been very consistent – bitcoin wallets are anonymous and by the time it is traced to the crypto-currency exchange point, the funds have already been transferred out. Next, Peter explored the difference between AI insurance versus cyber insurance. Swiss Re, for example, now has an AI set of competence and he stressed that every company will have or should have the same. In particular, he noted that the market is a soft one: what can you do to differentiate yourself in the market? Here, the silent cyber cover issue was used as an example – in other words, cyber cover is not excluded by the policy, but it is not included either.

2.5. Plenary session 3: From Risk to Resilience: the Role of Insurance in Addressing Climate Change and Natural Disasters

2.5.1. Moderator

Franziska Arnold-Dwyer, Assoc. Prof. Dr. University College London, London, UK

2.5.2. Speakers

- Francisco Espejo Gil, Subdirector de Estudios y Relaciones Internacionales, Consorcio de
- Compensación de Seguros, Madrid, Spain
- Jonathan Moss, Office Managing Partner, Global Head of Transport Sector /Head of Marine & Trade, DWF, London, UK
- Julian Enoizi, CEO of Guy Carpenter Europe, Italy
- Dr. Daniela Gamberini, Head of Pricing, REVO Assicurazioni S.p.A., Italy
- Roberta Spaldoni, Head of Parametric Insurance, REVO Assicurazioni, S.p.A., Italy

2.5.3. Summary

This session explored the following issues:

- Physical climate risk and growing protection gaps
- Data issues and pricing
- Building financial resilience with traditional insurance and parametric insurance solutions
- Insurance public private partnerships for natural disasters
- Fostering sustainable behaviours with insurance
- Role of insurance in climate adaptation and loss prevention

Franziska introduced the panel by noting that in 2024 alone, natural disaster losses estimated \$320 billion. Additionally, there were also non-economic consequences like physical and mental health, and loss of biodiversity. For insurers, claims costs are rising. In response to the increasing frequency and severity of weather-related events, combined with increased exposure, insurers are increasing premiums, reducing coverage by excluding specific weather-related perils and imposing limits of liability, and in some regions are withdrawing coverage altogether, to maintain profitability. This is creating protection gaps and adding to existing supply and demand-side protection gaps.

The first speaker, Francisco Espejo Gil, used the 2024 Valencia floods as case study to highlight the issue. He explained how the Spanish PPP, Consorcio de Compensación de Seguros (CCS), has played a key role in compensating the flood victims. He also explained how Consorcio operates, is funded, and works in tandem with the private market.

Francisco emphasized the following key points about CCS: The compulsory nature of the cover extension (to common policies: multi-risk home insurance, MTPL, etc.) maximises mutualisation, guarantees affordability, eliminates adverse selection, and allows for data collection by a single organisation. However, the private market involvement is essential because: (1) private undertakings sell the policies (and cover extension is a selling point), (2) private undertakings can choose insurable risks (as the private part also bears certain hazards), and create a culture of cooperation with the public sector is in place.

Roberta and Daniela presented on a new parametric insurance product triggered by earthquake and floods that their company developed in response to a new Italian law.

Jonathan Moss looked at claims from assureds and the difficulties insurers are facing from environmental policies and climate risk. Here, he noted that all lines of business are impacted. Business interruption insurance, for example, is impacted because property damage may result from storms etc. But cargo claims have also risen as a result, and these can be split into two: claims for damage to terminal, quays and docks on the one hand and supply chain claims on the other hand. Additionally, there is an increase in D&O claims. For example, in *Client Earth (and others) v Shell Plc [2023] EWHC*, it was argued (unsuccessfully) that the directors of the company had a duty to set an appropriate emissions target. Typically, D&O policies will cover these losses, hence the proliferation of disputes. Boards therefore need to put in place adequate arrangements to manage the risk and exposure. Product liability claims are also likely if there is harm to the environment. Here, there is also a need to be careful about what is called “Greenwashing”, Jonathan notes. In sum, what is required is for insurers to recruit insurance lawyers. These need to know the policy but also the landscape in general. And within the insurance company, the claims teams need to stick to green credentials.

Julian Enoizi suggested that a PPP is one solution, but that government has to create the private industry and that it cannot assume the risk from the ground up. In other words, governments must only absorb that which the industry cannot absorb. He highlighted many examples of the insurance industry incentivising good behaviours (seatbelts and sprinklers, to name just two examples) and that these precedents of ‘loss prevention’ measures now need to be translated into measures that shift behaviours and risk attitudes in relation to climate change. The insurance industry cannot simply respond with exclusions, rising premiums and withdrawing coverage – these measures will only result in the loss of trust by customers. Indeed, the insurance industry has made a significant amount of money in the last few years – it is cyclical – but if it’s making money and excluding losses there is a trust gap. Here, it is important not to lose sight of the fact that there are some losses which are uninsurable. The important point stressed is that insurance allows policyholders to recover faster. The need is to stop climate change becoming uninsurable by closing the protection gap, by encouraging mitigation, and thereby addressing the insurability issue at the root is essential.

2.6. Plenary session 4: Navigating Insurance and Reinsurance Conflicts: Arbitration and other ADR Forms

2.6.1. Moderator

Pilar Perales Viscasillas, Prof. Dr. Universidad Carlos III of Madrid, Madrid, Spain

2.6.2. Speakers

- Helmut Heiss, Prof. Dr. iur. Dr. h.c Universität Zürich, Zurich, Switzerland
- Natalie Vloemans, Partner, Ploum, Rotterdam, The Netherlands
- Eric Evian, Chair, CGPA Europe; Chair of ARIAS France, Luxembourg
- Gwawr Evans, Head of F&PS Claims, Aon, London, UK

2.6.3. Summary

This session explored the following issues:

- Arbitration clauses: avoiding pathologies
- Qualifications of the arbitrators and conflicts of interests
- Role of the applicable procedural and substantive law
- Usages and practices in insurance and reinsurance

The arbitration clause was described eloquently as the art of agreeing to disagree. In particular, it was noted that these clauses are often reviewed at the very of the contract, and that there is no ICC in London to submit arbitration to. That there is confusion between the clauses and the role of experts, and the industry was noted. In particular, the question as to whether arbitrators really are impartial was raised. It is given that arbitrators must be experts and have sufficient experience – so how independent or impartial can they really be? And, if not, how bad can that be? By way of example, a reluctance in the Dutch jurisdiction for institutions to arbitrate insurance disputes was noted – there are formal rules to disclose anything that might suggest a lack of impartiality.

It was noted that the Arbitration Act 2025 received Royal Assent but isn't in force. A summary of the changes was provided. A power to award summary awards will be conferred. The most important change, however, is that the validity of an arbitration clause will be determined by the seat of the arbitration and not by the law governing the policy: this is key from a claims perspective. Gwar noted that, generally, assureds and insurers will gravitate towards a KC in London or towards a civilian system. Indeed, arbitral awards do not have to be subject to English law, although they often are. An exception is for policies making use of the Bermuda form policy; here, New York law is used even if the arbitration is seated in London. Generally, it was noted that English courts are pro-arbitration. Moreover, English is one of the preferred languages of international commerce and London boasts a strong pool of arbitrators specialising in insurance and reinsurance disputes including KCs that have decades of experience in how to understand and navigate insurance dynamics and practices – a notable example being Lord Mance sitting as an arbitrator in *Certain Policyholders v China Taiping Insurance (UK) Co Ltd*.¹⁴

For both parties to an arbitration, the composition of the tribunal is a key strategic priority. The London market is very people focused. Arbitrators are chosen for their reputation and their putative views. Generally, is the proposed arbitrator considered to be pro-insurer or pro-assured, and what are their views on aggregation – do they favour a broad or narrow analysis? How have they decided certain issues in previous arbitrations?

Under English law, where a policy contains arbitration clause, it creates a separate agreement between arbitrator and each participating insurer: if a policy is underwritten by 3 separate insurers, it results in 3 separate arbitration agreements with each participating insurer, and arbitration clauses are also severable from the policy – under s.7 Arbitration Act 1996.

Finally, Helmut spoke about the PRICL project.¹⁵ He started with the reminder that reinsurance contracts are always commercial contracts. The Principles of Reinsurance Contract Law (“PRICL”) are a transnational ‘soft law’ framework which aims to provide reinsurance markets with uniform, clear, simple and balanced rules on reinsurance contract law, endorsed by UNIDROIT. The PRICL can be adopted by choosing them as an equivalent to a governing law choice of a domestic law, or by way of incorporation as terms of the contract of reinsurance. Helmut stressed that the aim was not to change insurance law but to codify it to make the law transparent and certain – and to do this without being disruptive.

¹⁴ <https://7kbw.co.uk/wp-content/uploads/2021/09/China-Taiping-Insurance-UK-Co-Ltd-Award.pdf>, (accessed September 2022).

¹⁵ UNIDROIT, < <https://www.unidroit.org/instruments/reinsurance-contracts/> > last accessed June 2025.

3. Day two: Working Party Group presentations and Plenary session 5

3.1. AIDA Dispute Resolution Party: Arbitration, Mediation or Litigation in (Re)Insurance: Which way to go?

3.1.1. Chair

Christopher Rodd, Principal, Chris Rodd Mediation, Melbourne, Australia

3.1.2. Speakers

- Jonathan Scragg, Senior Partner, Duncan Cotterill, Wellington, New Zealand
- Christian Lang, Founder CGL Law; Group General Counsel Youplus Assurance, Switzerland
- Giovanna Aucone, Partner, FIVERS, Milan, Italy
- Paulino Fajardo, Prof. Dr. ICADE University, Madrid; Head of Disputes for Europe, Middle East and Africa, Herbert Smith Freehills, Madrid, Spain
- Laura Cooke, Partner, Clyde and Co, London, UK

Jonathan Scragg began by unpacking the pros and cons of each three methods of ADR, specifically in the insurance context, with an emphasis on law and practice in New Zealand. He noted, in particular, that power imbalances can pose an issue regarding mediation: insurance companies are very experienced, and policyholders are unsophisticated – in comparison. Moreover, there needs to be a mutual appetite for resolution. Jonathan noted the interesting development of mediation: barristers used to mediate in an overly legalistic and ad hoc manner, where now they have specialised training and approach the issues much more holistically. Arbitration represents not a hybrid between mediation and litigation; instead, it is closer to litigation in that it involves a decision being “forced” upon the parties. In New Zealand, High Court judges with different backgrounds hear cases which mean that you get judges in the litigation forum not well-versed in the specific area of law in dispute. In arbitration, however, in the New Zealand market, retired High Court judges who have had civil practice – specifically in the area under dispute – will serve as arbitrators.

Laura Cooke remarked that Jonathan’s presentation rings true of English and Welsh law too, but that in English courts, there is a concentration of insurance-specific experts - but not across the entire bench. She noted that as of October 2024, a court is now empowered, in appropriate cases, to pause a trial to allow the parties to pursue ADR, representing a slight step change. She focussed also on without prejudice discussions which are baked into dispute resolution clauses and used a specific example of a clause which specifically provided for a principal to principal meeting to sort the issue out which raises interesting aspects. Indeed, while what the policy says is important, depending on the nature of the dispute and the counterparty, the parties can agree to step away from what the policy says.

Laura then remarked on the business interruption Covid-19 test case.¹⁶ The case was heard by Butcher J and Flaux LJ at first instance, both of whom are insurance specialists. She highlighted the work of the Financial Ombudsman Service (FOS) which, historically, has dealt with complaints from consumers. However, in the last 5 years, its jurisdiction has been expanded to include micro enterprises and small businesses – these being defined as having a turnover of £6.5 million or less. Interestingly, Laura noted that the decision must be fair and reasonable in all the circumstances – there is a need to take the law into account, but it can be departed from. This has resulted in some curious quantum awards and that the FOS is somewhat limited in that it will not deal with contribution and would be unsuited to deciding on issues of aggregation. Laura also added that in the UK, litigation funding isn’t really regulated but the current context is one of rising shareholder group actions. The litigation funders tend to target competition cartels and bring portfolios of claims for insolvency practitioners. She noted that proposals to create legislation have fallen by the wayside, and that there is currently a huge

¹⁶ *The FCA v Arch Insurance (UK) Limited and Others* [2020] EWHC 2448 (Comm). FCA, ‘BUSINESS INTERRUPTION INSURANCE TEST CASE FRAMEWORK AGREEMENT [CONFORMED COPY]’ fca.org.uk/publication/corporate/bi-interruption-test-case-framework-agreement.pdf, (accessed September 2022). The Scheme allowed issues of ‘particular public importance’ to be heard without a cause of action where the issues were ‘immediately relevant authoritative English law guidance’, Practice Direction 51M of the English Civil Procedure Rules (CPR). Note: Practice Direction 51M was revoked on 1 October 2020, CPR (122nd Practice Direction Update), <https://www.justice.gov.uk/courts/procedure-rules/civil>, (accessed September 2022).

consultation about what should be done next – whether this is an issue of legal services or financial services regulators.¹⁷

Giovanna Aucone provided an interesting account focussed on motor vehicle insurance. Here, it is mandatory to use assisted negotiation – in other words, it is an agreement between the parties and the lawyers to reach an agreement about the case. You can arrive at a final solution, but you are not obliged to find the solution. It was noted that mediation and negotiation are cheaper than appointing an insurance arbitrator; there exists a specific website and requests can be submitted to the website thereby rendering the need to be assisted by a lawyer redundant. On the issue of how many insurance arbitrators there are in Italy, this appears to be a complex issue. The main problem with ADR is that there is no “prepared” person: an academic is appointed to determine disputes and so there is not much faith in the system!

Christian Lang spoke to the management of a dispute. He remarked that the practical reality is that rarely is there a claim where the parties have not tried mediation first. He viewed mediation as helping the parties to prepare for the real case: it tests the merits of the case. Indeed, if the numbers are too big, the case will never settle at this stage, but at least the parties have a better sense of the merits of the case.

3.2. AIDA Reinsurance Working Party: Reinsurance implications of catastrophic events – California fires/Valencia floods

3.2.1. Chair

Pablo S. Cerejido, Partner, Marval O’Farrell Mairal, Buenos Aires, Argentina

3.2.2. Speakers

- Joaquín Ruiz Echauri, Partner, Pérez-Llorca, Madrid, Spain
- Ralph Fearnhead, Partner, Mishcon de Reya, London, UK
- Shenaz Lyons, Associate, Mishcon de Reya, London, UK

This working party meeting discussed the reinsurance issues arising out of the Californian Wildfires and Valencia floods. Ralph Fearnhead and Shenaz Lyons delivered a joint presentation about the Californian wildfires.

The Californian FAIR plan is a syndicated fire insurance pool.¹⁸ It is comprised of property and casualty insurers and catastrophe reinsurers: all insurers licensed to write basic property property/casualty business in California are members. It operates under legal requirements which are set by the state – it is neither a state agency nor a public entity and it does not benefit from public or taxpayer funding. It is funded by every member participating in the profits, losses and expenses of the Plan in direct proportion to its market share of business written in the state. The FAIR plan was devised to provide insurance cover for properties that are deemed high-risk and therefore difficult to insure in the traditional insurance marketplace. However, insurers have been withdrawing from the Californian market because of the increase in wildfire claims and the Plan’s exposure has increased significantly.

The speakers reported that in February 2025, the California Department of Insurance (CDI) announced that the Pan needed an extra \$4.7 billion, with half to be raised from policyholders by a 50% fee premium level and the other half to be passed onto the private insurance market. The policyholders reportedly are trying to challenge this increase by means of a class action, and the insurers are looking to pass this onto their reinsurers.

The speakers reported that it is typical for policies to contain pollution exclusions – and that smoke from fires typically is classed as air pollution whereas dust is not. Turning specifically to the reinsurance issues, not many claims have been filed yet. The specific issues are likely to relate to the timing of the loss. Here, there is a potential contractual certainty issue. Policies are typically renewed on two specific dates of the year, the first of these being the 1 January. The losses occurred on the 7 January: at this point in time, the policy/slip had been stamped but the wording had not yet been agreed – as is typical. Another potential issue relates to aggregation. The speakers report that Mercury General, one of the primary insurers in California, estimates the losses at \$2.5 billion. The policy uses relatively loose aggregation wording (*may* be aggregated, as opposed to *shall* be

¹⁷ Civil Justice Council, ‘Review of Litigation Funding: Final Report’ (2 June 2025) <[chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://www.judiciary.uk/wp-content/uploads/2025/06/CJC-Review-of-Litigation-Funding-Final-Report-2.pdf](https://www.judiciary.uk/wp-content/uploads/2025/06/CJC-Review-of-Litigation-Funding-Final-Report-2.pdf)> last accessed June 2025.

¹⁸ ‘About the Californian Fair Plan’, <<https://www.cfpnet.com/about-fair-plan/>> last accessed June 2025.

aggregated) which gives Mercury General the option as to how many losses to present – in other words, to present one claim or two. Aggregation also raises a question mark as to reinstatement and hours clauses. Finally, subrogation potentially is a big issue here. The speakers reported that some smaller insurers in California, faced with large losses, are looking to sell their subrogation rights (to hedge funds etc) having paid out reserves, for 45-50 cents per dollar. Reinsurers, however, are sceptical: left with a shortfall, they will either claim on that basis or the insurers will claim that they are prejudiced.

3.3. Plenary session 5: Distribution, Policy Holder Protection and Sustainability

3.3.1. Moderator

Margarida Lima Rego, Prof. Dr. NOVA Universidade, Lisbon, Portugal

3.3.2. Speakers

- Vincenzo Troiano, Prof. Dr. University of Perugia, Italy; Partner, Chiomenti, Rome, Italy
- Cecília Gaspar, Managing Director, Caixa Geral de Depósitos (CGD), Lisbon, Portugal
- Zoé Van Hamme, EU Affairs Policy Advisor, BIPAR, Brussels, Belgium
- Arthur van den Hurk, Senior Regulator counsel

3.3.3. Summary

This session explored the following issues:

- Sustainability in distribution:
 - How to investigate the sustainability preferences/reporting;
 - How to embed the sustainability issues in insurance product;
 - How to assist clients in embedding sustainability concerns in their products and businesses
- Greenwashing?

Zoé Van Hamme spoke about “greenwashing”. She began by asking what it is and whether it already has an impact on the insurance industry? The European Supervisory Authorities (ESAs) provides a definition:

[A] practice where sustainability-related statements, declarations, actions, or communications do not clearly and fairly reflect the underlying sustainability profile of an entity, a financial product, or financial services. This practice may be misleading to consumers, investors, or other market participants.¹⁹

The speaker commented that it is known that it has an impact due to “greenhushing” - the practice of a company downplaying, underreporting, or withholding information about its environmental efforts and achievements due to greenwashing. The ESAs has produced a final report on greenwashing.²⁰

Cecília Gaspar lent an interesting perspective to the panel as neither a lawyer nor an insurance specialist but a banking sector specialist. Her work involves helping clients with their ESG rating. Looking at the ESG rating model, she commented that what makes their model unique is its holistic approach. It evaluates companies across three dimensions: it includes not only transition and physical risks but also other environmental risks. In total, it uses twenty indicators from ten sources of public data. To demonstrate how it works, the speaker used a hypothetical company in the plastics industry. Suppose that the company receives a satisfactory rating – it can see how it compares to other companies in the same sector as well as see where it is underperforming itself. The company can then drill down to see why it is like that; perhaps the water and energy expenses are high, or its sustainable investment is below average, for example. Conversely, the company can also see where it is doing well; perhaps it invests heavily in training, pays above average salaries etc.

Essentially, innovation has been proven to pay off because the ESG rating model of the CGD won a ‘sustainability award’: the 4th edition of the national sustainability award, category ‘sustainable finance’.

¹⁹ ESMA, ‘ESAs put forward common understanding of greenwashing and warn on risks’ <https://www.esma.europa.eu/press-news/esma-news/esas-put-forward-common-understanding-greenwashing-and-warn-risks> last accessed June 2025.

²⁰ ESMA, ‘Final Report on Greenwashing’ <chrome-extension://efaidnbmnnnibpcajpcgclefindmkaj/https://www.esma.europa.eu/sites/default/files/2024-06/ESMA36-287652198-2699_Final_Report_on_Greenwashing.pdf> last accessed June 2025.

3.4. Closing Remarks: Trends and Takeaways

Prof. Dr Oliver Brand summarised the trends and key takeaways comprehensively. Here, they can be summarised briefly for BILA journal readers as follows. First, the industry deems AI as a powerful tool to adapt how insurance as a financial product is offered and perceived. There is a need to embrace innovation while ensuring its ethical and responsible use – the challenge here lies in avoiding a failed regulatory burden on the industry because modern insurance law is a jungle littered with a plethora of acronyms. Second, the EU AI Act may put the EU insurance market at a competitive disadvantage – it may be overly strict.

3.5. Next conferences

For those interested in attending the next AIDA Europe conference, it will be held in Rotterdam – either at the end of May or the beginning of June 2026. The next AIDA World conference will be held 14-17 September 2027 in Hamburg. For updates about both events, see <https://aidainsurance.org/>.