



Newsletter

Insurance

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EDITORIAL

Dear readers,

As we reach the halfway point of the year, this second edition of our newsletter witnesses the vitality and diversity of the issues driving insurance and liability law. It also reflects our team's ongoing commitment to deciphering the developments in case law and legislation that shape our practice.

The month of June saw a number of landmark decisions: a reminder of the conditions for recognising the civil liability of court-appointed experts, clarification of banks' duty of vigilance in the face of "fraud to the president", and the legislative enshrinement of lucrative fault. These are all signs of a law on the move, which is reinforcing its demands for rigour, transparency and accountability.

We also offer you an insight into the impact of the draft "Bill on the simplification of economic life" on insurance law, which does not necessarily simplify it, particularly for insurers, as well as a useful reminder of the conditions under which clauses limiting cover can be enforced. These analyses, carried out by members of our team, are intended to provide you with practical and operational reading keys.

Finally, this edition highlights the latest activities of DWF: the participation of Arnaud Attias in the Rendez-vous ParisMAT 2025, a report on the conference devoted to "Compliance and loss management" and a focus on the activities of DWF Claims France, presented by its director in France, Jeremy Walter.

We hope you find this newsletter useful. Please do not hesitate to send us your feedback or to pass on this content to your teams.

We hope you enjoy reading it!

Romain Dupeyré

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CIVIL LIABILITY

The court-appointed expert, the technical arm of the judge ... but not immune from liability claims

Cass. 1^{ère}civ, 19 March 2025, 23-17.696

Facts

The purchaser of a house requested a court-appointed expert opinion to rule on various defects. On the basis of the expert's report, the purchaser sued the sellers and the contractors responsible for the construction under the 10-year warranty. His claim was dismissed by a ruling of the Cour de cassation on 3 April 2013.

On 10 February 2017, the purchaser brought an action against the court-appointed expert and his professional indemnity insurer for negligence in drawing up his report, which he considered to be erroneous or incomplete and to have contributed to the failure of his subsequent legal action. The defendants argued that the action was time-barred and sought damages for abuse of process.

In a ruling handed down on 25 April 2023, the Lyon Court of Appeal held that the action was admissible, holding that the 5-year limitation period had only begun to run from 3 April 2013, the date of the French Supreme Court ruling refusing his compensation on the basis of the legal expert's report.

The Court of Appeal ordered the legal expert and his insurer to compensate the purchaser jointly and severally, finding that the inaccuracies in the legal expert's report had caused the purchaser to lose a 40% chance of winning his case.

Solution

In its ruling of 19 March 2025, the French Supreme Court rejected the claims of the legal expert and his civil liability insurer.

With regard to the limitation period: On the basis of article 2224 of the Civil Code, the French Supreme Court confirmed that the starting point for the limitation period is the date on which the court decision rejecting the buyer's claim became irrevocable, i.e. 3 April 2013. The action brought against the court-appointed expert on 10 February 2017 was therefore admissible.

Liability of the court-appointed surveyor: Following a reminder of the principle that a court-appointed surveyor may be held civilly liable for negligence in the performance of his duties, the French Supreme Court upheld the appeal judgment, holding that the *"hypothetical and imprecise nature of the surveyor's conclusions, which were not supported by investigations into the cause of the defects"* contributed to the buyer's loss of chance of obtaining compensation.

Consequently, without being obliged to order a new expert opinion, the Court of Appeal was justified in holding that the expert had committed a fault that had caused the purchaser to lose a chance of obtaining legal redress, sovereignly evaluated at 40%.

Comment

According to a ministerial reply, *"the legal expert is a man of the art who, without interfering in the assessment of the dispute, provides the court with technical information likely to enlighten it on a given point"* (JOAN 25 April 1961, p. 528). Although he has no obligation of result, the legal expert remains under an obligation of rigour in the accomplishment of his mission.

In upholding the conviction of a surveyor whose imprecise report contributed to the failure of a ten-year warranty claim, the French Supreme Court reiterated that, as an auxiliary officer of the court, a court-appointed surveyor is liable in tort where his failings cause damage (Cass. 2thciv., 13 Sept. 2012, no. 11-16.216, no. 1431 FS-P+B), in this case a loss of opportunity to win a case.

The interest of this decision lies in the explicit recognition of the causal link between the shortcomings of an expert report and the unfavourable court decision, despite the judge's intervention. Indeed, the fact that the judge ruled with knowledge of the criticisms levelled against the expert's report is not sufficient to exonerate the legal expert from liability (Cass. 2thciv., 8 Oct. 1986, no. 85-14.201).

This ruling is part of a rare but demanding line of case law regarding the rigour expected of legal experts.



FRAUD

"Chairman's fraud": The contours of the bank's duty of care

Cass. com. 12 June 2025, no. 24-10.168 (FS-B)



Facts

Between 14 and 17 May 2019, the accountant of a company, misled by fraudulent emails posing as the company's director, ordered four transfers to a foreign account opened in a Hungarian bank for a total amount of €384,625.

The company sued the bank, alleging that it had breached its duty of care, on the grounds that the transfers contained apparent anomalies.

In a ruling handed down on 8 November 2023, the Paris Court of Appeal dismissed the claim on the grounds that the transfer orders did not contain any apparent anomalies justifying the bank's intervention.

Solution

The French Supreme Court confirmed that there were no anomalies in the transfer orders that should have alerted the bank because of:

- the amount of the transfers, which remained within the client's agreed daily limits;
- the disputed transactions, which did not result in a debit balance; and
- the destination of the transfers, which was an account held in the books of an authorised bank in a member state of the European Union that did not attract particular attention in terms of security.

The company's argument that the maximum amount of transfers it had made abroad over the past 3 years was only €9,293 was not sufficient to characterise an apparent anomaly such as to justify the bank's intervention.

The French Supreme Court also ruled out the need to refer a question to the Court of Justice of the European Union for a preliminary ruling on the Payment Services Directive, considering that there was no reasonable doubt justifying such a referral.

Comment

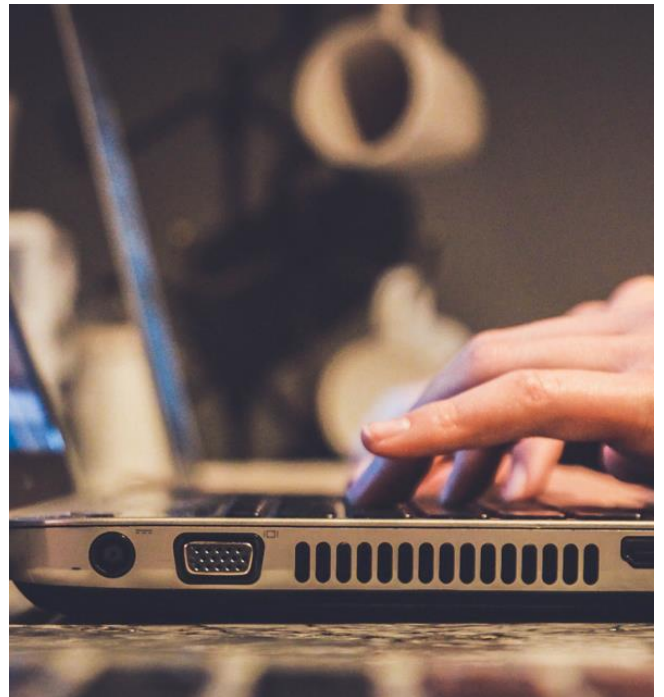
It is common ground that a bank has a duty of care, under which it is obliged to detect customer transactions that are obviously irregular. However, it is not easy to identify an apparent anomaly in the case of a particular type of fraud known as "president fraud."

With this ruling, and a second handed down on the same day (No 24-13.697), the French Supreme Court backed up its position in this area by making its position clear in a press release published on the occasion.

The statement recalls that the fraudulent procedure consists of impersonating a senior company official or one of its representatives in order to obtain from a company employee a transfer of money to a new account. The swindler is very insistent with the victim, persuading them of the confidential nature of the transaction and the urgency of making the transfer.

As the "chairman fraud" is considered to be a transaction authorised by the company, European banking liability law is not intended to apply.

Under domestic law, while the bank's liability may be sought on the basis of its duty of care, this requires proof of the existence of an apparent anomaly (e.g. very high amount or frequency of transfers, unusual country to which the transfer is made), requiring the bank to be particularly vigilant. In this respect, the second judgment quashed the judgment of the court of appeal, which held the bank liable without *"investigating, as it was required to do, whether the bank had failed in its duty of care by obtaining confirmation from a person authorised to issue payment orders"*. The list of persons from whom the bank must obtain validation of transactions with apparent anomalies is therefore not limited to the chief executive or financial director alone, but depends on a case-by-case assessment.



Souleymane Simpara

CIVIL LIABILITY

Lucrative fault: Legislative recognition of an innovative but restricted mechanism

The new article 1254 of the French Civil Code, created by Act No 2025-391 of 30 April 2025 containing various provisions for adapting to European Union law in the fields of economics, finance, the environment, energy, transport, health and the movement of persons (also known as the "DDADUE 2025 Act"), introduces into French law the possibility of a civil penalty being imposed on any person who has derived a profit from a fault.

Under the new text, any person found liable for a breach of legal or contractual obligations relating to his or her professional activity must be sentenced by a court in a specially reasoned decision, subject to two conditions:

- Firstly, the perpetrator must have deliberately committed a fault with the aim of obtaining an undue gain or saving;
- Secondly, the breach must have caused one or more losses to *"several natural or legal persons placed in a similar situation"*, which in this case refers to the requirement of serial loss.

The request for an order must be made by the public prosecutor, in the case of judicial proceedings, or by the government, in the case of administrative proceedings.

The amount awarded will be paid into a fund dedicated to financing group actions, and not to the victim.

The text also stipulates that the amount of the fine must be proportionate to the seriousness of the misconduct committed and the profit made by the perpetrator – a maximum being introduced for natural persons, corresponding to twice the profit made, and for legal entities, to five times the amount of the profit made.

Last but not least, the risk of a civil penalty being imposed is not insurable.

In this way, the legislator has established a punitive mechanism that is unprecedented in tort law.

Matthieu Lohr



INSURANCE

Bill "to simplify economic life": what impact will it have on insurance law?

On 17 June 2025, the National Assembly adopted a draft bill to simplify economic life. Here is a (provisional) overview of the main innovations affecting insurance law, pending the final version of the text once it has been submitted to the vote of the deputies and senators meeting in a joint committee.

First of all, in the case of **legal expenses insurance**, the bill envisages that the procedure for appointing the third party responsible for proposing a solution to the difficulties encountered by the insurer and the policyholder in resolving a dispute will interrupt the time limit for bringing a legal action - until now envisaged as a reason for suspending the time limit. This interruption would then start a new period running from "the date on which the third party responsible for proposing a solution has made its content known".

Secondly, the bill introduces specific conditions for the **termination of an insurance contract concluded by a contracting authority** or entity, requiring the insurer to give notice of termination at least six months before the effective date.

New obligations are imposed on insurers in **tacitly renewable contracts covering natural persons** outside their professional activities, consisting of sending a notice of expiry to the policyholder, annually, on the date of renewal of the contract, including a reminder of the purpose of the insurance, the annual amount of premiums due, the date of subscription and a clear reminder of the cancellation procedures.





In addition, and with a view to settling claims more quickly, the text envisages enshrining a new article L121-18 in the Insurance Code, which would require **the insurer to send the policyholder a proposal for compensation or reparation within 4 months of the claim being reported**, if an expert is appointed. If the causes of the loss have not been determined, or if the loss has not been assessed, the insurer must send the policyholder a proposal or a reasoned refusal to make an advance payment.

If no expert has been appointed, the insurer must send the insured a proposal for compensation or reparation or a reasoned refusal within one month of the claim being reported. If the policyholder agrees to the proposal, the insurer will have one month from receipt to appoint the company responsible for repairing the damaged property or to pay the agreed compensation or deposit.

The bill also devotes a new chapter of the Insurance Code to the insurance of risks arising from emergency peril procedures. This cover is included in fire or property damage insurance policies taken out by individuals, in return for an additional premium calculated on the basis of a single rate set by decree for each category of policy.

Finally, as a result of climate change, the cancellation of an insurance contract or an increase in premium for increased risk will no longer be possible for climate risks, in the same way as the unilateral cancellation of a contract by an insurer covering an individual outside their professional activity.

Changes are also being made to the natural catastrophe insurance regime. In particular, it is planned to specify that excesses will only apply once in the event of a succession of natural hazards of the same nature over a short period.

All these additions will have to be confirmed - or not - once the bill has been submitted to the Joint Committee for a vote. Stay tuned!

Matthieu Lohr

INSURANCES

A salutary double reminder of the conditions for the enforceability of clauses limiting cover

Cass. 2thciv. 13 February 2025, No 23-17.739

A recent ruling by the Court of Cassation (2thciv., 13 February 2025, no. 23-17.739) is a stark reminder of the requirements that insurers must meet in order to enforce coverage limits: it is not enough for a clause to exist in the policy; it must also be proven that the insured was aware of it before the loss occurred.

The background

A policyholder who was the victim of a road traffic accident received initial compensation. Following a worsening of his state of health, he asked for additional compensation. The insurer objected to the limit of cover set out in the special terms and conditions issued **after** the accident and not signed by the policyholder. The insured then challenged the enforceability of this clause.

The Court of Appeal ruled in favour of the insurer, taking the view that the ceiling in question had been mentioned in an earlier procedure, which proved that the insured had indeed been aware of it. The Court of Cassation overturned this decision, ruling that **the insurer had failed to demonstrate that the policyholder had been aware of the cover limit before the claim arose**, which is an essential condition for it to be enforceable.

Points to bear in mind

- **A clause is enforceable only if the insured was aware of it before the claim.** The Court firmly reiterated that a clause limiting cover can only be enforced against the insured if it has been communicated and explained to him/her **prior to the occurrence of the loss**.
- **The insurer must provide proof of this information.** The insurer **bears the entire burden of proof**: it must show that the clause was brought to the policyholder's attention and that it was accepted. In the absence of signature of the insurance contract (General and Special Conditions), formal delivery of the contract or an explicit reference clause in a document signed by the policyholder, the clause may be declared unenforceable.

A consistent position

This ruling should be read in conjunction with another decision handed down on the same day by the Second Civil Chamber of the Court of Cassation (Cass. 2^{ème}civ., 13 February 2025, no. 23-16.750), also relating to a dispute concerning the enforceability of clauses limiting cover.

In this second case, the Court upheld the enforceability of the clause, the trial judges having noted that the Special Conditions, which had been signed by the insured, expressly stated that the insured acknowledged having been given the General Conditions and Special Conditions, which included the disputed clause.

A comparison of these two rulings is instructive: it illustrates that the Court favours above all a factual approach, based on the material elements produced in the proceedings, in perfect consistency with the general law of obligations.

Mathilde Mevel



MARITIME TRANSPORT

On the limit of liability of the transporter

Cour de cassation, Com, 21 May 2025, No 24-11.519

A Senegalese company, Société de cultures légumières ("**SCL**"), entrusted the sea transport between Senegal and the United Kingdom of several containers of sweetcorn, packed in bulk, to the company CMA-CGM, which issued a bill of lading on 28 April 2017.

On receipt of the goods, one container was subject to reservations due to temperature variations. The loss was estimated at €28,982. SCL's insurers (the "**Insurers**") compensated it for this amount and brought an action for damages against the carrier.

The Court of Appeal (Aix-en-Provence, 28 September 2023) found against the carrier, but within the limits of a single package.

The insurers unsuccessfully appealed to the French Supreme Court.

The Cour de cassation first recalled that under the terms of article 4.5 of the original Brussels Convention of 25 August 1924 for the Unification of Certain Rules Relating to Bills of Lading (the "**Hague Convention**"), neither the carrier nor the ship shall be liable under any circumstances for loss or damage to or in respect of the goods in excess of £100 per package or unit, or the equivalent of that sum in any other currency, unless the nature and value of the goods have been declared by the shipper prior to shipment and such declaration has been inserted in the bill of lading.

It then relied on the discretionary power of the lower courts to hold that the parties to the bill of lading had designated the container, and not the kg of maize, as the unit of freight.

In this case, the court had noted that :

- the bill of lading referred, for the container concerned, to "1 Lots said to contain sweet corn" and considered that "the parties to the contract of carriage had referred to a freight unit" ;
- as the reference to a number of ears of corn is not apparent from the information on the bill of lading, this reference is not intended to serve as a unit of freight in the case in point, unless the courts decide, in the event that the bill of lading is insufficient, to determine the unit chosen by the parties in the light of the other contractual documents;
- the reference in the bill of lading to the gross weight of the cargo under the heading "gross weight cargo" at 24,500 kg cannot take precedence over the precise information given under the heading "Description of packages and goods as stated by shipper".

This judgment illustrates the application of the Hague Convention in its original version of 1924, unamended by the Visby Protocol of 1968, which is still in force and calls for vigilance in the drafting of bills of lading.

As a reminder, the Hague-Visby Convention offers two methods of calculating liability limits: per package or unit, or per kg.



Arnaud Attias

RGPD

Damages for infringement of the right of access to professional emails

Cass. soc., 18 June 2025, no. 23-19.022



An employee of Publicis Sapient France, who was hired in 2001 as a development director and last held the position of associate director, was dismissed for misconduct on 30 March 2018 after a precautionary suspension. The dismissal followed an internal investigation into alleged sexual harassment and sexist behaviour.

The employee challenged his dismissal before the industrial tribunal. The Court of Appeal (Paris, 25 May 2023) ruled that there was no real and serious reason for the dismissal and ordered the employer to pay damages for the vexatious circumstances of the termination and for failing to respect the right of access to personal data.

It is the latter aspect that interests us here. The Court of Appeal

- noted that the employee had requested access to emails sent or received by him in the course of his employment contract;
- noted that the company had merely sent him various documents (end-of-contract documents, pay slips, insurance documents, documents relating to a parking space, a car, contractual documents, work stoppage notices, individual health monitoring, personal income tax returns, documents relating to dismissal) but had not provided any evidence that it had communicated either the metadata or the content of the emails sent or received by him;
- noted that the company did not give any reason for its failure to do so;
- ruled that this abstention was at fault and found that it had caused the employee concerned a loss, the amount of which it assessed on its own merits (500 euros out of the 10,000 euros claimed by the employee).



The employer appealed to the Court of Cassation, challenging the classification of professional emails as personal data.

The Court of Cassation dismissed the appeal, holding that e-mails sent or received by an employee via his or her professional e-mail account constitute personal data within the meaning of the RGPD, and the employee has the right to access them, and the employer must provide him or her with both the metadata and their content, unless the rights and freedoms of others are infringed.

While some have described this decision as an earthquake, it should be noted that with this ruling the Cour de cassation is adopting a CNIL position dating back to 2022. In its fact sheet, the CNIL emphasises the contours and limits of this right of access. These are as follows,

- The right of access relates only to personal data and not to documents;
- Exercising the right of access must not infringe the rights of third parties (business and intellectual property secrets, right to privacy, secrecy of correspondence, etc.), which may therefore restrict the range of data that can be accessed or communicated.

Arnaud Attias

3 questions to Jeremy Walter, Head of Claims Management at DWF Claims in France

During DWF Insurance Global Week, the DWF Claims teams held their summer cocktail party on the roof of the Wagtail on Wednesday 14 May 2025. This was an opportunity to interview Jeremy Walter, Head of Claims Management at DWF Claims in France, to find out more about his work.

1. What does DWF Claims France do?

DWF Claims France is an international claims management company based in Paris. We support our clients - insurers, brokers, Lloyd's syndicates, companies and individuals - in the management of all types of claims, from frequent claims (theft, water damage, glass breakage, etc.) to major claims (major fires, serious bodily injury claims, industrial claims, transport claims, etc.).

Our mission is to offer a tailor-made, responsive and rigorous service, adapting to the specific needs of each partner.

We provide dedicated teams, innovative technological tools such as EvoClaim, and a results-oriented approach, with precise monitoring of SLAs and KPIs.

2. What is the make-up of the team in France and how is it developing?

Our French team is made up of bilingual claims managers who have acquired their expertise in insurance companies, insurance brokers and private sector businesses. This diversity of backgrounds enables us to handle complex cases, ranging from serious bodily injury claims to medical liability, property damage, shipping and motor sport.

The team is growing all the time, and is gradually being strengthened to meet the increasing volume of cases and growing demand from our clients.

3. What are your business lines and how do you work with the other DWF Claims teams around the world?

We work on a wide range of cover: general liability, property damage, motor fleet, construction, transport and medical liability.

Our approach is based on strong business specialisation and the ability to handle major claims, including international claims.

As part of the DWF network, we work closely with the other teams in the international DWF Claims organisation, based in the UK, Ireland, the USA, Canada, Australia, Italy and Spain. This global network enables us to offer continuity of service, shared expertise and harmonised claims management.

Arnaud Attias at Rendez-vous ParisMAT 2025

Our team was represented at the Rendez-vous ParisMAT 2025 by Arnaud Attias, at the Maison de la Chimie in Paris on 23 and 24 June 2025.

This latest edition of this not-to-be-missed event, organised by CESAM, brought together the main players in marine, transport and aviation insurance for forward-looking debates and particularly topical and interesting technical discussions.

Among the highlights of the two days were

- A highly instructive session on the implementation of **war risks** insurance, particularly in the maritime and aviation context, in the light of the most recent case law;
- Practical feedback on the **theft of land freight**, recent types of theft and appropriate preventive measures;
- A **cyber** and **maritime** presentation on **frequency jamming**, and in particular its growing impact on shipping and logistics;
- And a major focus on **maritime assistance**, with recent cases of complex interventions that have led to the rescue of ships at sea.

In addition to the content shared, the conference also provided an opportunity for privileged exchanges with **our customers, partners and colleagues**, in a setting conducive to both in-depth discussions and informal exchanges - notably during the reception organised at the sumptuous Cercle de l'Union Interalliée.

Conference on “Challenges of Compliance in Insurance”

On the occasion of this conference organized by CNAM-ENASS on May 14, 2025, which Souleymane attended, the speakers explored contemporary compliance issues in the insurance sector, drawing on concrete feedback from industry professionals.

The discussions on “*Compliance, Claims Management, and Outsourcing*” highlighted several key points:

- **Fraud:** Insurance fraud has become more difficult to detect as it hides in technical details, often amplified by the use of artificial intelligence. It can occur at all stages of a policy's lifecycle, including underwriting and claims processing. Digital tools, especially those based on AI, enable fast and precise detection, but they do not replace human analysis, which remains essential for interpreting weak signals and contextualizing suspicious cases.
- **Claims:** Claims handling relies on a combination of technological tools and communication skills. AI is used to detect dissatisfaction early, particularly through email or social media analysis. However, providing clear explanations to policyholders and defusing complaints as soon as they arise are major levers for improving the customer experience. It is also crucial to distinguish between simple dissatisfaction and a formal complaint.
- **Data Protection:** The protection of personal data varies depending on the nature of the activities. Sensitive data, such as health information, must be handled by authorized personnel following strict procedures. Compliance with regulations such as the GDPR or the AI Act is imperative, with additional constraints when multiple jurisdictions are involved. Principles such as data minimization, encryption, and retention period management are applied to ensure compliance.



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