Newsletter

Insurance

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In this issue

EDITORIAL

Dear readers,

In this latest issue of our Insurance newsletter, we wanted to highlight several recent court decisions illustrating the diverse challenges faced by our clients in the insurance and transport sectors.

The topics covered in this edition reflect current market concerns: compensation for victims of road traffic accidents; the relationship between interest on arrears and penalties specific to the Insurance Code; the enforceability of standard policies in marine insurance; directors' liability; personal injury and the duty of care; and limitations of liability in groupage transport operations. These topics serve as a reminder of just how much the field of insurance remains at the crossroads of litigation, risk management and contractual practice.

These issues reflect the expertise developed by DWF's Insurance team and our approach, which is designed to be both operational and sector-specific, attentive to developments in case law as well as market transformations.

This sector-specific focus was also central to the Rendez-Vous ParisMAT 2026 event, in which Arnaud Attias and Juliette Doebeli took part last June. The discussions on geopolitical risks, the energy transition, maritime cybersecurity, supply chains and trends in the transport market illustrate the importance of ongoing dialogue between practitioners, insurers and industry professionals.

We hope this newsletter will provide you with useful insights into these developments and fuel your thinking over the coming months. The entire DWF Insurance team wishes you an enjoyable read and a wonderful summer.

Romain Dupeyré

ROAD TRAFFIC ACCIDENTS

Doubling of the statutory interest rate and default interest: two penalties for the insurer's delay, but two distinct matters

Civil Court of Cassation 2nd Chamber, 18 June 2026, No. 24-21.811, published in the Bulletin

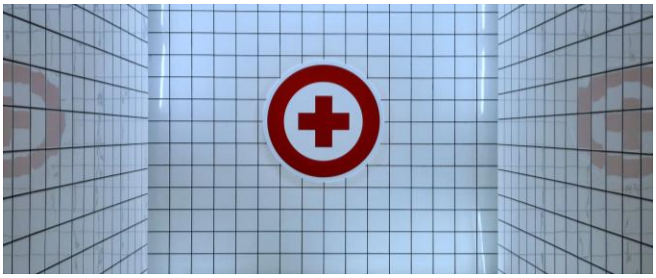
In a judgment of 18 June 2026 (No. 24-21.811 – published in the Bulletin), the Second Civil Chamber of the Court of Cassation provided an important clarification on the distinction between default interest under ordinary law and the penalty of doubling the statutory interest rate provided for in Article L. 211-13 of the Insurance Code, in relation to compensation for road traffic accidents. The High Court of Cassation states that these two claims do not have the same subject matter, meaning that res judicata does not preclude a subsequent action seeking to impose a penalty on the defaulting insurer.

Following a road traffic accident, a victim had obtained, by way of a final judgment, a settlement for their personal injury and an order requiring the insurer to pay them compensation together with interest at the statutory rate.

Subsequent to that decision, the victim brought new proceedings to obtain payment of interest at double the statutory rate, pursuant to Article L. 211-13 of the Insurance Code, alleging that the insurer had failed to make an offer of compensation within the time limits laid down in Article L. 211-9 of the same Code.

The Douai Court of Appeal declared this claim inadmissible. In its view, the victim had already sought interest in the initial proceedings and could not subsequently return to court, both on the grounds of res judicata and the principle of concentration of claims.

The Court of Cassation quashed the appeal judgment, emphasising the specific nature of the mechanism established by Article L. 211-13 of the Insurance Code, as well as the difference in subject-matter and cause of action compared with interest under ordinary law.



According to the Court of Cassation, the claim seeking to double the statutory interest rate 'is intended to compel the insurer to make an offer of compensation within the time limits laid down in Article L. 211-9', which distinguishes it from a claim for interest at the statutory rate from the date of formal notice, due as a result of a delay in the payment of a monetary obligation, as provided for in Article 1231-6 of the Civil Code.

The special sanction under the Insurance Code serves, in essence, as an incentive and a deterrent: it aims to ensure the effectiveness of the offer procedure established by the Badinter Act and to encourage insurers to compensate victims of road traffic accidents promptly.

Consequently, the identity of subject-matter and cause of action—specifically required by Article 1355 of the Civil Code to establish res judicata—was lacking in this case.

The Court of Cassation thus fully recognises the distinction, from both a substantive and procedural perspective, between ordinary default interest and increased interest in the event of a late offer. This judgment usefully serves as a reminder that the claim relating to the penalty for failure to make an offer or for a delay in doing so retains its independence from the claim relating to ordinary default interest. In other words, this is a solution that is both favourable to victims and consistent with the spirit and letter of the law.

Matthieu Lohr

PERSONAL INJURY

The organiser of a sporting or leisure activity cannot rely on the victim's negligence in the absence of safety instructions

Court of Cassation, Plenary Assembly, 29 May 2026, No. 23-20.005

During a summer camp organised by an association, a fifteen-year-old boy was the victim of a serious swimming accident, as a result of which he was left quadriplegic. The trial judges had held the organiser liable on the grounds of breaches of its duty of care, whilst limiting the compensation to 40 per cent, on the basis that the victim had contributed to the occurrence of his injury by recklessly diving into a shallow area.

On hearing the case, the Plenary Assembly of the Court of Cassation brought about a significant reversal of case law. It first pointed out that, under general liability law, the victim's fault in contributing to the occurrence of their injury traditionally constitutes grounds for partial exemption from liability on the part of the liable party. However, the Court also emphasised that personal injury is subject to special treatment under positive law, given the harm caused to a person's physical or mental integrity.

The High Court then notes that professionals organising sporting or leisure activities are under a duty to provide information and warnings regarding the risks inherent in the activity on offer. This duty entails providing safety instructions tailored both to the activity in question and to the relevant public.

On this basis, the Plenary Assembly now holds that a professional organiser who has failed to provide the necessary safety instructions cannot claim shared liability by invoking the victim's negligence where such information would have been capable of preventing the accident. The Court considers, in fact, that a breach of the duty to provide information precludes the victim's negligence from being held to have legally contributed to the occurrence of the personal injury.

In this case, the Court of Appeal had itself found that the victim had been allowed to swim without having received any information or specific instructions regarding the dangers associated with the shallow water. In these circumstances, the organising association could not rely on the young participant's negligence to limit the extent of its liability. The judgment is therefore quashed in so far as it limited compensation for the harm suffered by the victim to 40 per cent.

This decision marks a significant development in the case law applicable to sporting and leisure activities. Whilst it does not generally call into question the principle of shared liability in the event of fault on the part of the victim, it holds that a professional organiser who has failed to provide safety instructions appropriate to the relevant public cannot rely on the victim's negligence where that failure contributed to the occurrence of the personal injury.

Practical implications

- **Reduced scope for apportioning liability:** increased risk of full compensation for public liability insurers where safety instructions cannot be demonstrated;

- **Greater burden of proof:** the ability to trace the preventive measures implemented by the organiser becomes central to the analysis of the claim and the insured party's defence;

- **Need to formalise preventative measures:** briefings, regulations, information leaflets, and written or displayed instructions must demonstrate that appropriate instructions tailored to the relevant audience have been effectively communicated, in order to preserve the possibility of invoking the victim's negligent behaviour, where applicable.

Mathilde Mevel

DIRECTORS' LIABILITY

The absence of a shortfall in assets cannot be presumed

Court of Cassation, Commercial chamber, 4 March 2026, No. 24-10.828

Background

Following the compulsory liquidation of the company Scanner, the liquidator held the former managing director liable under ordinary law (Article L. 223-22 of the Commercial Code).

The former manager was accused of several acts of mismanagement revealing a blurring of the lines between his personal interests and those of the company. On the one hand, he had set up a system for invoicing fees to a company he controlled, without any real consideration in return, resulting in his remuneration being doubled. On the other hand, he had entrusted accounting tasks to a service provider who lacked the requisite qualifications. Finally, he had charged personal expenses to the company, in particular those relating to the use of his vehicle.

These actions, constituting breaches of duty in the management of the company, had caused direct damage to the company and justified the claim for damages brought by the liquidator.

The issue, however, centred on the admissibility of this claim in the context of compulsory liquidation, given the existence of the specific claim for insufficiency of assets (Article L. 651-2 of the Commercial Code).

The Court of Appeal of Saint-Denis, Réunion, upheld the admissibility of the claim, noting that it did not appear from the case file that the liquidation revealed a shortfall in assets. It concluded that, in the absence of such a shortfall, the liquidator could bring proceedings under ordinary law.

Decision

The Court of Cassation quashed this decision, clarifying the conditions for the admissibility of an action under ordinary law.

It reiterated that the liquidator may bring proceedings on this basis only if the judicial liquidation does not reveal a shortfall in assets, in which case only an action for shortfall in assets would be admissible.

Above all, however, it criticised the Court of Appeal for failing to positively establish this absence. By relying solely on the absence of evidence establishing a shortfall in assets, without analysing the company's financial data, the trial judges deprived their decision of a legal basis.

The Court thus reiterates established case law: it is for the liquidator to demonstrate that the liquidation does not involve a shortfall in assets.

This decision encourages practitioners to plan their litigation strategy from the very outset of insolvency proceedings. The choice of the legal basis for the action can only be made following a detailed analysis of the company's financial situation.

Souleymane Simpara

MARINE INSURANCE

Standard policies and jurisdiction clauses

Court of Appeal of Aix-en-Provence, 21 May 2026, Case No. RG 25/11614

In a judgment of 21 May 2026, the Court of Appeal of Aix-en-Provence provided useful clarification on two recurring issues in marine insurance: the enforceability of the general terms and conditions comprising a standard marine insurance policy and the conditions for the validity of a jurisdiction clause contained therein. This decision serves to reinforce the unique position of French standard marine insurance policies in the sector's practice, whilst offering some useful caveats to ensure their enforceability.

The facts

A company specialising in coastal clean-up had purchased a commercial vessel intended for waste recovery and taken out a marine insurance policy with an insurer, effective from 25 April 2023.

Following the theft of the vessel in August 2023 and the insurer's refusal to pay the claim, the insured brought proceedings against the insurer before the Aix-en-Provence Judicial Court to seek compensation for its loss.

The insurer then raised a plea of lack of territorial jurisdiction, invoking a clause contained in the general terms and conditions of the French marine hull insurance policy. This clause provided that insurers could only be sued before the Commercial Court of the 'place of insurrection', which in this case was Paris.

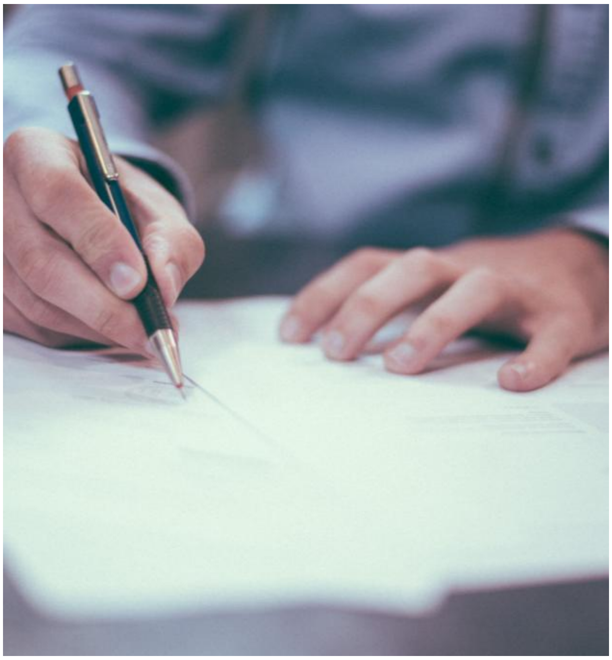
The pre-trial judge, however, refused to apply this clause, ruling that it had not been established that the insured party was aware of the general terms and conditions containing it. The insurer lodged an appeal, which was successful.

The enforceability of the general terms and conditions: the scope of acknowledgement of receipt

The main issue in the dispute centred on the enforceability of the general terms and conditions of the marine insurance policy.

In accordance with Article 1119 of the Civil Code, general terms and conditions are only binding on the other party if they have been brought to that party's attention and accepted by them.

In this case, the special conditions, signed by Clean'Sea Eco, expressly stated that the contract comprised, inter alia, the 'Marine Hull Insurance Policy for All Vessels' (1998 form, amended in 2002). They also included a clause stating that the policyholder acknowledged having received a copy of all the contractual documents.



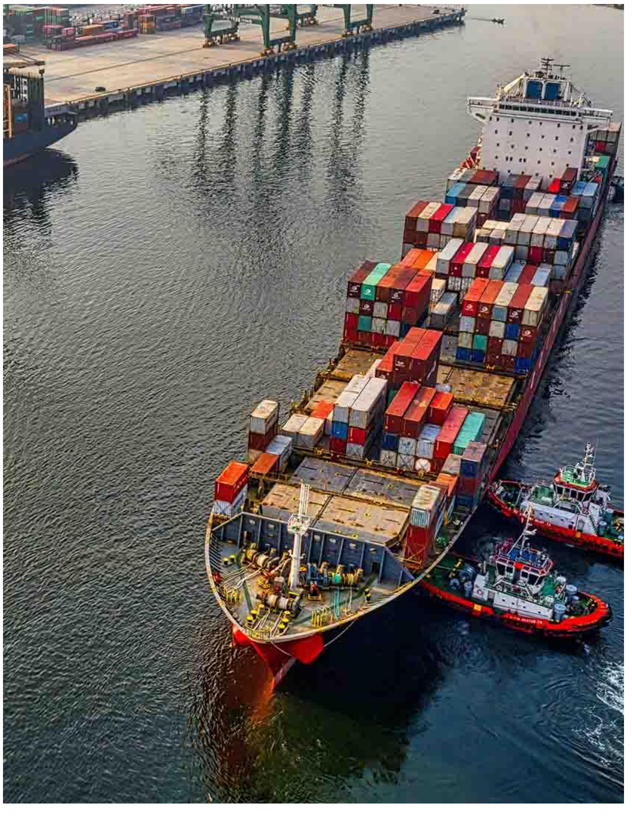
The Court of Appeal concluded that the insured party cannot validly challenge the enforceability of these general terms and conditions. The written acknowledgement of their receipt, incorporated into the special conditions and bearing the policyholder's signature, constitutes sufficient evidence to establish that they were brought to the policyholder's attention.

This ruling confirms a now well-established line of case law: a mere reference to general terms and conditions is not always sufficient to render them enforceable, but the signature on a document expressly stating that they have been provided generally serves to demonstrate their acceptance.

Validation of the jurisdiction clause

The judgment is also of practical significance regarding the application of Article 48 of the Code of Civil Procedure.

To be valid, a clause derogating from the rules on territorial jurisdiction must not only be agreed between traders, but must also be 'specified in a very conspicuous manner' in the agreement of the party against whom it is invoked.



There was no doubt here as to the commercial status of the parties. It therefore remained to be determined whether the disputed clause met the requirement of particular prominence imposed by the text.

The court answered in the affirmative. It noted that **the clause appeared in Chapter VIII, entitled 'Procedural Provisions', of the standard terms and conditions, that it was set out in a separate paragraph, and that it was printed in bold type**. According to the judges, this presentation allowed for clear and immediate identification of the provision relating to jurisdiction.

The judgment thus quashed the order at first instance and referred the case back to the Paris Economic Activities Court, the court designated by the clause.

A decision rooted in maritime insurance practice

This judgment highlights the specific context of French marine insurance policies.

These standard policies, in use since the 19th century, form the traditional contractual basis for hull insurance and, more generally, for marine insurance. Their long history, widespread recognition and accessibility have led some legal scholars to consider that a simple contractual reference should suffice to render them enforceable against professionals in the sector.

Case law, however, remains more stringent. The judgment of the Court of Appeal of Aix-en-Provence bases the enforceability of the standard policy not on its widespread recognition, but on written acknowledgement of its receipt.

With regard to the jurisdiction clause, the decision illustrates a pragmatic assessment of the requirement for 'highly conspicuous specification'. Whilst the mere use of bold type is not always deemed sufficient by case law, it constitutes an important indicator when accompanied by a clear and structured presentation of the clause.

Arnaud Attias

ROAD FREIGHT TRANSPORT

The freight forwarder's limitation of liability put to the test in groupage operations

Court of cassation, Commercial chamber, 15 April 2026, No. 24-20.106, Published in the bulletin

In a judgment of 15 April 2026, the Commercial Chamber of the Court of Cassation ruled on a key practical issue in the field of transport: how to determine the freight forwarder's liability limit in the case of groupage operations?

Adopting a pragmatic approach, the High Court now gives priority to the total weight of the consignment actually handed over to the carrier, rather than that of the principal's individual consignment.

I. <u>Facts and proceedings</u>

In this case, a company had entrusted a freight forwarder with the transport, from China to France, of 328 parcels of textiles weighing a total of 2.07 tonnes. These goods were consolidated with other consignments in a container totalling 19 tonnes, then handed over to a road haulier under a single consignment note. During transit, the entire consignment was destroyed by fire.

The consignor's insurer, having been subrogated to the consignor's rights following payment of compensation, brought an action against the freight forwarder for liability.

The trial judges limited the compensation to 6,624 euros, applying the limits set out in the 'general' standard contract solely to the weight of the principal's goods (2.07 tonnes), on the grounds that the freight forwarder could not be held liable for more than it would have incurred had it carried out the transport itself.

On appeal by the insurer, the Court of Cassation quashed the appeal judgment

II. <u>IScope of the decision: an affirmation of the criterion of the total weight of the consolidated consignment</u>

The High Court based its decision on a combination of the rules applicable to the freight forwarding contract and the standard 'general' road haulage contract.

It points out, on the one hand, that the freight forwarder is liable for the acts of its agents, subject to the conditions set out in Article L. 132-6 of the Commercial Code, and that this liability is limited to that incurred by the carrier in connection with the consignment entrusted to it.

It further specifies that the carrier's limits on compensation (set, in particular, according to the weight of the consignment) must be determined on the basis of the concept of a 'consignment', defined as the quantity of goods actually handed over, at the same time, to a carrier under a single contract.

However, in the present case, the carrier had been entrusted not only with the consignor's goods, but with a single container weighing a total of 19 tonnes

The Court of Cassation concludes that the compensation limits must be assessed in the light of this total weight, corresponding to the consignment actually entrusted to the substitute carrier.

In doing so, it rejected the reasoning of the lower courts, which had adopted an individualised approach based on the net weight of the consignor's goods.

The scope of the decision is therefore clear: in the case of groupage, the freight forwarder's limitation of liability must be assessed in relation to the total weight of the consignment taken on by the carrier, and not in relation to the principal's individual consignment.

III. The practical implications of the decision

Whilst the approach adopted by the Court of Cassation is theoretically consistent, its practical implications remain open to debate.

By holding that the compensation cap must be calculated on the basis of the total weight of the groupage consignment, the decision is likely to produce effects that are difficult to reconcile with the rationale behind the liability limitation mechanism, particularly where there are multiple principals.

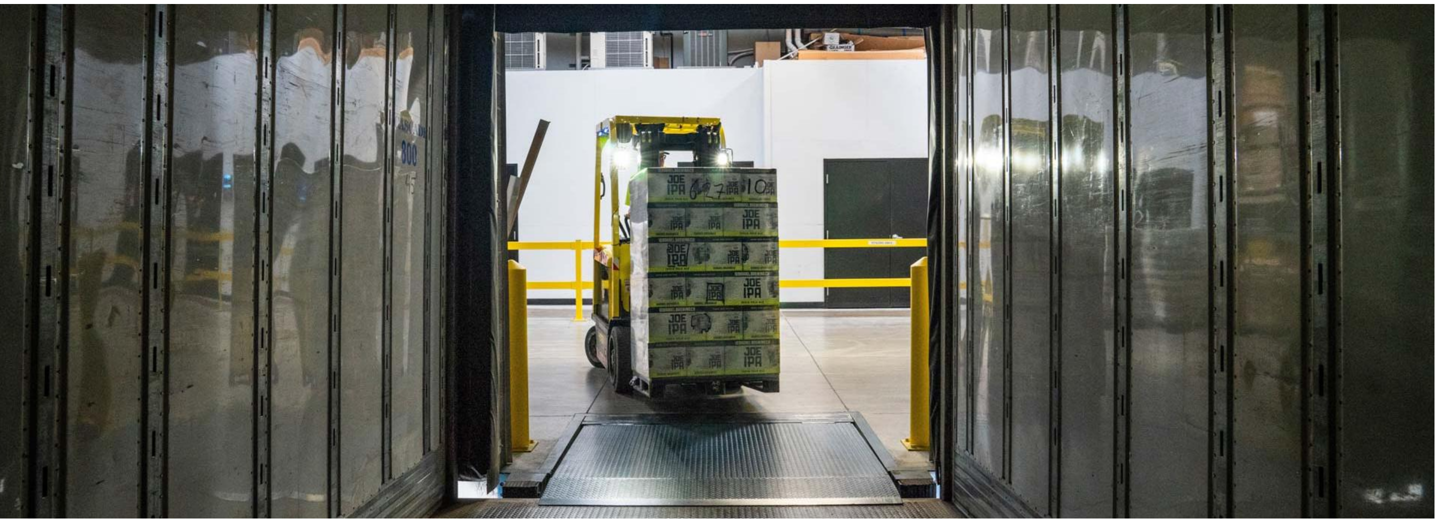
Indeed, two interpretations are possible.

The first would be to grant each consignor the benefit of a limit calculated on the basis of the total groupage, which could lead to a multiplication of limits and, consequently, an excessive burden on the carrier.

Conversely, a second interpretation would lead to the view that a single overall limit applies to all entitled parties, thereby implying a distribution amongst them, which could disadvantage certain consignors.

These uncertainties highlight the limitations of an approach based strictly on the concept of a consignment and reveal the difficulties in reconciling, on the one hand, the overall logic of groupage transport and, on the other, the individual rights of each consignor..

Juliette Doebeli



Arnaud Attias and Juliette Doebeli at the Rendez-Vous ParisMAT 2026

On 22 and 23 June 2026, Arnaud Attias and Juliette Doebeli represented DWF at the Rendez-Vous ParisMAT 2026, the must-attend event for professionals in marine, aviation and transport insurance organised by CESAM at the Maison de la Chimie in Paris.

Discussions focused in particular on the major challenges currently shaping the market: evolving geopolitical risks affecting global supply chains; the implications of the energy transition for maritime transport; cybersecurity challenges in the merchant navy and port infrastructure; and recent trends in transport insurance and the management of of complex claims.

Beyond the wealth of insightful presentations, this event provided an excellent opportunity to network with key players in the sector.

It was a particularly successful event, characterised by high-quality discussions and numerous meetings with our clients, partners and colleagues from the maritime and transport sectors.

Welcome to Our New Trainees!

The Insurance team at **DWF France** is delighted to welcome **Daly Ba** and **Bordan Zottner**, who have joined our Paris office as trainees for the coming months.

During their time with us, Daly and Bordan will be involved in a wide range of matters, gaining hands-on experience across the diverse legal and commercial challenges faced by our clients. They will contribute to ongoing casework, legal research, drafting and knowledge-sharing initiatives, while working alongside colleagues across the team.

We are thrilled to have them on board and look forward to supporting them throughout this exciting stage of their professional journey.

Please join us in giving Daly and Bordan a very warm welcome to DWF France!

Romain Dupeyré

Partner

+ 33 1 40 69 26 55

r.dupeyre@dwf.law

Arnaud Attias

Counsel

+ 33 1 40 69 54 10

a.attias@dwf.law

Mathilde Mevel

Associate

+ 33 1 40 69 26 64

m.mevel@dwf.law

Matthieu Lohr

Associate

+ 33 1 40 69 26 62

m.lohr@dwf.law

Souleymane Simpara

Associate

+ 33 1 40 69 26 96

s.simpara@dwf.law

Juliette Doebeli

Associate

+ 33 1 40 69 26 58

j.doebeli@dwf.law

Jeremy Walter

Head of Claims Management

+ 33 1 40 69 26 50

j.walter@dwfclaims.com

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