Insurance Litigation

Contributing editors
Mary Beth Forshaw and Elisa Alcabes

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GETTING THE DEAL THROUGH

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Austria

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Preliminary and jurisdictional considerations in insurance litigation

1 In what fora are insurance disputes litigated?

Although in recent years alternative dispute resolution instruments have been promoted by counsellors, the vast majority of liability und cover disputes are tried before civil courts. Depending on the amount at issue, the local district courts will hear cases in which the dispute value does not exceed €15,000, whereas the regional courts are competent where higher amounts are in dispute.

Should one of the parties later file for appeal against a first instance court decision, the appellant may challenge the ruling before the courts of the second and third instance (ie, the Higher Regional Court and the Supreme Court of Justice of the Republic of Austria, respectively).

A number of insurance contracts and conditions contain provisions pertaining to the territorial jurisdiction and even the international jurisdiction, which – if valid and binding – also have to be taken into account when assessing the relevant jurisdiction for a claim or its defence, respectively.

Furthermore, insurance disputes may be submitted to arbitration. As Austria has a long-standing tradition as an arbitration hub and offers the necessary instruments and institutional support (ie, the Vienna International Arbitral Centre and the Vienna Rules) the founding of the Austrian Branch of ARIAS (the AIDA Reinsurance and Insurance Arbitration Society) in 2016 was a predictable and logical consequence. Nevertheless, arbitration is still of minor relevance for insurance or reinsurance disputes.

Even though a number of alternative dispute resolution services and arbitral institutions exist, currently the vast majority of insurance disputes are either settled informally or decided by state courts.

2 When do insurance-related causes of action accrue?

The reasons for the emergence of insurance disputes and subsequent court proceedings are manifold. Many insurance-related causes of actions relate to an insured's reluctance to accept a lack of cover for certain damages. Financial loss insurances, especially financial lines policies, and industry insurances have become more elaborate and complex due to corresponding intricacies of relevant liability issues. Furthermore, non-cover related, but liability-relevant factual circumstances are another major reason for conflict. This leads to one of the main reasons for insurance disputes: breaches of obligations and duties by the insureds under the respective policy and a consequential rescission of the insurance contract as well as a possible revocation of cover by the insurer.

Litigation regarding reinsurance disputes barely occurs; at such level disputes are regularly settled amicably out of court.

The vast majority of insurance disputes (not necessarily specific to Austria) stem from the diametrical interpretation of insurance conditions by the parties involved, especially as the complexity of policy wordings has grown considerably in recent years.

This very general and common problem of a provision's unintentional room for interpretation is sometimes amplified by an idiosyncrasy of the Austrian insurance market. That is, often insurance conditions are not tailor-made for the Austrian market in what would be a costly and time-consuming process, but rather copied from other jurisdictions and only adapted cursorily. Life insurance litigation will probably gain further momentum as the Austrian Supreme Court of Justice eased the consumers' ability to exercise their right of cancellation of the contract ex tunc by issuing a groundbreaking judgment in 2015.

3 What preliminary procedural and strategic considerations should be evaluated in insurance litigation?

The considerations to be taken into account in insurance litigation by insurers are twofold: one has to assess the risk exposure related to the court proceedings at hand and, at the same time, to safeguard one's recovery claims against third parties.

As with any other disputes, the parties to a possible insurance litigation should evaluate all (known) facts that may be relevant to the question of claim, coverage and recovery. Fundamental considerations are of course the applicable rules on the allocation of the burden of proof:

- Can the occurrence of the event in question be proven?
- Under which further preconditions would such event be insured?
- Is there ambiguity in the relevant provisions of the insurance policy or conditions?
- Do the applicable statutory provisions or the respective case law give rise to legal uncertainties or room for interpretation?
- Will the insurer be able to argue a breach of obligation or duty by the insured?
- How time-consuming and costly will litigation be, approximately?
- Is there a better alternative to a court proceeding or will the initiation of a litigation procedure force the opponent back to negotiation?

The scope and contents of such evaluation will of course be different for each individual case and its depth depends on the matter at stake. Where, for instance, insurance coverage depends on the establishment of liability by an insured or third person, the assessment will also have to take into account a possible 'liability tier'. A dispute between an insurance company and an insured person may then entail one or more court proceedings concerning the establishment of liability and possibly another proceeding regarding the question of insurance cover.

On a more practical level, insurers commonly face an initial information disparity when the insured submits a notice of an occurrence. Typically, the insured has first-hand knowledge of the event that is claimed to be insured under the policy. On the other hand, the insurer is often only aware of the alleged incident itself. Thus, in a first step, the insurance company will request any relevant information and documents from the insured, who is obliged to comply with such request under the Austrian Insurance Contract Act. This problem of shortage of information on the insurer's side is of even greater significance with respect to D&O, errors and omissions (E&O) and warranty and indemnity (W&I) insurance disputes.

Depending on the amount in dispute and the complexity of the case, the preparation of a litigation decision tree might be useful, as this tool facilitates risk assessment and supports quick and accurate decision making throughout the entire dispute.

4 What remedies or damages may apply?

Almost any insurance-related litigation concerns the question of insurance coverage. Where the insured is in disagreement with the insurer, he or she may file for specific performance of the insurance contract (ie,

the granting of coverage). Depending on whether or not the losses or costs incurred in connection with the insured event are already definite and quantifiable, the insured may choose to recover a specific sum or file for declaratory relief.

In cases where the insurer has terminated or rescinded the insurance contract (or revoked a cover note) due to breaches of obligations and duties by the insureds, the insurer will generally also file for specific performance (ie, for restitution of insurance payments).

Thus, while the question of whether the insured suffered losses or damages as a result of a certain event is of course paramount to most insurance disputes, the parties do not always file for damages but also for specific performance or declaratory relief. Most disputes will, of course, still involve claims for damages and boil down to the following questions: Will the insurer have to compensate the insured for past or future losses in connection with a specific event? Can liability by the insured (or a third party as in automobile liability insurance) be established?

Claims for damages are of particular importance in recovery actions initiated by the insurer against the liable person or entity, as the insurer will then – after subrogation or assignment of the claims to the insurer – proceed against the injuring party directly.

5 Under what circumstances can extracontractual or punitive damages be awarded?

With minor exceptions not relevant to typical insurance disputes, Austrian civil law does not recognise the common law principle of 'punitive damages'. Instead, the Austrian law of obligations regards damages as a purely compensatory measure, not a punitive matter. Thus, both contractual and extracontractual damages may only be claimed relating to an incurred or imminent loss, the amount being limited to the actual prejudice suffered. Such prejudice may include lost profit.

Besides the occurrence of damage itself, the basic requirements of a claim for damages under Austrian law are cause, fault and – unlike the German law of obligations – illegality. The Austrian Civil Code sets forth these four basic prerequisites for both contractual and extracontractual damages. Generally, the burden of proof lies with the party bringing the claim or invoking a fact.

Interpretation of insurance contracts

6 What rules govern interpretation of insurance policies?

In principle, the interpretation of insurance policies and conditions does not differ from the exegesis of any other contract or general terms and conditions. While Austrian statutory law does not provide for insurance-specific principles of interpretation, the existing insurance-related case law has to be taken into account.

Where the parties have not agreed on specifics regarding the provision in question, the Austrian Supreme Court of Justice held that insurance policies and conditions are to be interpreted objectively (ie, based on their wording and its interpretation by an average and reasonably well-informed insured).

Insurance disputes will almost always concern the interpretation of the policy and applicable insurance conditions. While the principles on their interpretation established by doctrine and case law do give guidance, certainty – to the degree possible – can ultimately only be determined by the courts. Experience and pertinent knowledge of the case law will, of course, help make use of the overlapping general principles and rulings.

7 When is an insurance policy provision ambiguous and how are such ambiguities resolved?

As stated above, ambiguities of a policy's wording are resolved by carrying out a hypothetical interpretation: How would an average and reasonably well informed insured interpret the provision? Such fictitious interpretation by the (equally) fictitious insured has to take into account customs and usage as well as linguistic usage. If the ambiguity cannot be resolved by way of this hypothetical interpretation, such ambiguity will, as a general rule, be at the expense of the insurer as author of the relevant provision (and thus, its wording). This rule does not apply in cases where a provision has been individually negotiated.

While the insurer is relatively free in drafting the wording of policy and conditions, the provisions will only be applicable insofar as Austrian law does not regard them as invalid. In this respect, regard is to be had to the statutory provisions on the review of general terms and conditions. This is especially crucial in cases where the insured is a consumer. Even in business-to-business settings, certain provisions may be invalid if included in general (insurance) conditions.

Notice to insurance companies

8 What are the mechanics of providing notice?

The insured is required by law to inform the insurer of a loss (or other event possibly insured under the policy) without undue delay. The notice is to be addressed either to the insurer directly or to an authorised agent or broker responsible for the contract. Where more than one insurance company is involved, notice to the lead insurer suffices.

In addition to these general stipulations of the Austrian Insurance Contract Act, the policy or insurance conditions often contain further contractual rules in connection with providing notice. These may include definite time limits or form requirements.

The notice itself does not have to contain an in-depth description of the event. However, once the notice is filed, the insurer is entitled to request all information and documents pertaining to the event to be supplied and handed over by the insured. In fact, the insured is then obliged to cooperate fully in establishing the facts.

9 What are a policyholder's notice obligations for a claims-made policy?

While claims-made policies are definitely of relevance in the Austrian market, they are the exception rather than the rule. In fact, claims-made is, if anything, alien to the Austrian conception of liability insurance.

The typical claims-made policy (ie, mainly financial lines and specialty lines products) available on the Austrian market is not a product developed originally with the Austrian market in mind, but rather a product replicated based on the Anglo-American model. For this reason, no statutory provisions exist for claims-made policies. The policyholder's notice obligations are thus ultimately determined by the policy's terms and conditions. By contrast, the occurrence of the misconduct or negligence, or the loss itself (and not the assertion of the claim), is decisive for the typical Austrian model of liability insurance.

10 When is notice untimely?

As elaborated above, the scope of the insured's obligation to notify depends both on the type of insurance and the exact wording of the policy and applicable conditions. Where such wording specifies an exact period of time by which, calculated from the insured's knowledge of the event, the latter has to issue notice to the insurer, this period will be decisive. This of course also applies to notices not in conformity with form requirements set forth in the policy or conditions.

Where, on the other hand, such provisions are either invalid or not included in the relevant wording at all, the general rules apply. In such a case a notice is deemed untimely where the insured is positively aware of the event but does not inform the insurer in due time. When exactly a notice is considered untimely is to be determined on a case-by-case basis.

11 What are the consequences of late notice?

From a statutory perspective, the Austrian Insurance Contract Act itself does not contain sanctions for late notice, at least not directly. However, (timely) notice is 'rewarded' with a suspension of the limitation period. In principle, all claims arising from the insurance contract become time-barred after a period of three years. This period is suspended when the insured notifies the insurer and only continues to run when the insurer, in turn, submits its written and substantiated underwriting decision, (ie, whether or not coverage will be granted). In this case, the insured has to sue within one year of receipt of said decision.

Another important (but not equally well-known) statutory limitation period concerns cases where a party other than the insurer and the policyholder is not aware of the existence of insurance coverage. An example of such 'third party' within the scope of this provision would be a company executive unaware of a D&O policy or the equally unaware beneficiary of a life insurance policy. In such cases, the Austrian Insurance Contract Act provides for a 10-year limitation period.

However, in practice, most insurance policies and conditions will in fact provide for such negative consequences of late notice. For

example, the insurer is frequently released from its obligations under the policy entirely if the insured does not issue notice in time. Breaches of obligation by the insured, including but not limited to late notice, are customarily sanctioned with measures relative to the gravity of the breach. These sanctions may range from a mere limitation of coverage to the complete loss of coverage. While a complete loss of coverage may seem disproportionate to some, such sanction actually appears to be adequate in light of the detriment of the insurer in case of late notice: late notice frequently impedes the insurer's possibility to assess the occurrence effectively and to intervene accordingly. It may even make recourse actions against the party ultimately responsible altogether impossible.

The insurer is, however, not entirely free in drafting insurance conditions and setting forth the desired consequences of breaches of obligations and duties. This is because, under Austrian law, insurance conditions are considered general terms and conditions and, as such, are subject to review by the courts (see question 7).

Late notice may not be invoked where the insurer learned of the relevant information via other channels. This could be the case where a third person notified the insurer or the notice is indeed issued by the insured but does not comply with the required form (ie, telephone call versus written form).

In summary, the consequences of late notice will differ from case to case and depend on the extent and validity of the provisions set forth in the insurance conditions as well as the gravity of negligence on the insured's side.

Insurer's duty to defend

12 What is the scope of an insurer's duty to defend?

Austrian liability insurance law distinguishes between the insurer's duty to provide for defence against unfounded claims and the duty to satisfy a third party's claim, where such claim is valid. The insurer's duty to finance defence is set forth in the Austrian Insurance Contract Act's section on liability insurance by way of a general framework. Insurers may choose to incorporate deviating or additional clauses into their respective insurance conditions. When doing so, insurers should heed the fact that some of these statutory provisions are mandatory and may not be deviated from to the detriment of the insured.

The concept of the insurer's duty to defend as envisaged by the Austrian Insurance Contract Act mainly concerns the costs arising in connection with the judicial or extrajudicial defence against the claim raised by a third party. The costs incurred in this context also include the costs of legal representation and the insurer is generally required to advance them, if the insured so requests.

According to settled case law, even costs for 'active litigation' (ie, the conducting of a lawsuit initiated by the insured against a third party) may be covered where (and insofar as) such third party, in turn, sets off liability claims of its own against the claims alleged by the insured. In practice, insurers often stipulate a right to appoint a particular counsel (rather than leaving the choice to the insured) and to instruct the insured as to the course of action.

The scope of the insurer's duty to defend depends not only on the respective policy's wording but also on the type of insurance, as the Austrian Insurance Contract Act also contains specific provisions on certain insurance types such as legal expense insurance.

13 What are the consequences of an insurer's failure to defend?

The duty to defend presupposes the emergence of an insured event. As, for example, with general liability insurance, any claim raised against the insured by a third party – whether justified or not – constitutes an insured event, the threshold for the duty to defend to be triggered is quite low.

Where the insurer choses to disregard such duty without giving proper and accurate justification, this failure to defend constitutes a culpable breach of the policy. In light of this, the insured can sue the insurer and demand performance of its duty to defend. The insured may even claim damages, where the failure to defend results in prejudice that would have been avoided had the insurer attended to its duty.

Standard commercial general liability policies

14 What constitutes bodily injury under a standard CGL policy?

Commercial general liability (CGL) policies typical to the Austrian market usually define bodily injury as including death, injury and damage to health and all consequences of such health impairments like medical expenses, loss of earnings, pension entitlements and compensation for pain and suffering.

15 What constitutes property damage under a standard CGL policy?

Property damage, on the other hand, usually includes the destruction or damaging of a thing as well as the manipulation of the physical substance resulting in a reduction of serviceability. As with bodily injury, the financial consequences of such impairments are also covered (consequential pecuniary losses).

16 What constitutes an occurrence under a standard CGL policy?

Most GCL policies define the occurrence of an insured event as an incident in connection with the insured risk. That is, the event directly causing the bodily injury or property damage for which the policyholder, other insured companies or their staff are or could be liable.

17 How is the number of covered occurrences determined?

The occurrence of an insured event is to be determined based on the wording of the relevant insurance policy or conditions. Although the definitions of an insured event vary in detail, most will contain at least three elements.

The first element concerns the specification of the event triggering the insurance (eg, the occurrence of the relevant misconduct, negligence or damage itself). The second element defines how this event is to be connected with the insured risk. Lastly, the third element divides the claims asserted by the third party into justified claims (thus triggering the insurer's duty to satisfy) on the one hand and unfounded claims (triggering the insurer's duty to defend) on the other.

Most GCL policies not only limit both the maximum insurance payout per occurrence and in total per period of insurance but also contain a clause on serial loss. The latter deems multiple claims stemming from one and the same cause as one single occurrence (see 'Update and trends').

18 What event or events trigger insurance coverage?

As indicated above, there are no statutory provisions defining when a certain event triggers insurance cover in a standard CGL policy. Thus only the policy itself and the corresponding insurance conditions determine when the insurer is required to provide cover (if and insofar as the insurance conditions withstand judicial review, see question 7). The trigger most commonly stipulated by GCL policies on the Austrian market is the actual occurrence of loss, while the claims-made principle, for example, is more common for D&O policies (see question 22).

19 How is insurance coverage allocated across multiple insurance policies?

When determining the allocation of coverage, two scenarios have to be distinguished.

The first scenario encompasses cases where the insurer is, at least initially, unaware of the additional supplementary or overlapping coverage taken out with another insurer. In Austria, these situations are referred to as 'double insurance'. The second scenario concerns cases where the insurer decides against insuring the risk on its own but rather opts to allocate the insured risk between multiple insurers, each bearing the liability pro rata. The insurers will then designate one lead insurer while the remaining insurance companies involved act as 'co-insurers'.

While, when it comes to drafting the relevant provisions, the parties involved are relatively free as far as the co-insurance scenario is concerned, relevant case law as well as a number of statutory rules and requirements have to be observed with regard to double insurance. In this context, the Austrian Insurance Contract Act stipulates, inter alia:

- a duty of the insured to notify the involved insurers of the coverage under the other policy without undue delay;
- that the insured cannot apply for and make use of the insurance coverage under multiple policies, where the granting of such

Update and trends

The impact of two relatively recent decisions of the Austrian Supreme Court of Justice can be expected to be felt in the near future.

The first judgment pertaining to life insurance has already been touched upon (see question 2). In its decision published in September 2015, the Court held that the insured is to be granted a permanent right of cancellation where the information about such right of cancellation was defective at the time of conclusion of the contract. This judgment, with regard to ECJ decision C-209/12 (*Walter Endress v Allianz Lebensversicherung AG*), implicates that wherever a policyholder was not informed fully and completely in the past, such insured may cancel the insurance contract and claim back the insurance premiums in full. This ruling can be expected to result in numerous lawsuits by policyholders dissatisfied with the value of their investment.

The second judgment concerns clauses on serial losses. While the facts of the case concerned D&O insurance, the ruling itself may well be transferred to other types of (liability) insurance. The Court ascertained that the insured's request for the insurer to attend to its duty to defend triggers the serial loss clause and, therefore, preserves insurance cover under a D&O policy as regards its liability cover, even if the insurance contract subsequently ended under a change of control clause.

On a regulatory level, attention should be drawn to the Insurance Distribution Directive (Directive 2016/97/EU), which will have to be implemented into national law until February 2018. The (transposed) directive will bring about change as regards, inter alia, conflict of interest, product regulation and the distribution of insurance investment products (as regulated under the MiFID II regime).

Finally, regarding international business, the Austrian Financial Market Authority (FMA), the competent authority for the supervision of insurers doing business in Austria, recently published data on the local insurers' volume of foreign business. According to the FMA, currently about half of the total volume of premiums is generated abroad, the key area being the Central and Eastern European region. The market share of Austria-based insurance groups in countries such as Slovakia (currently 37 per cent) and the Czech Republic (currently 47 per cent) has grown in recent years.

coverage would lead to insurance payouts surpassing, in total, either the insured value or the overall loss suffered;
- that the insurers involved in a case of double insurance are jointly and severally liable for the coverage to be granted under their respective policies; and
- that, where an insured intentionally and in bad faith brought about the double insurance scenario solely to gain an unlawful pecuniary advantage, all such contracts are void.

Insurers are well-advised to include subsidiarity clauses in their respective insurance conditions in order to avoid, to the degree possible, the downsides of double insurance scenarios. In effect, such subsidiarity clauses provide that an insurer is merely liable on a secondary tier. This means that coverage has to be granted only where the insured amounts of all policies taken out prior to the conclusion of the policy at hand are already used up.

Double insurance scenarios are common, for example, in the area of D&O insurance (eg, where an insured person is also insured under criminal defence insurance or general legal expense insurance).

First-party property insurance

20 What is the general scope of first-party property coverage?

The typical first-party property insurance to be found on the Austrian market is not a stand-alone product but rather a supplementary coverage to an existing (liability insurance) policy. This extension of coverage aims at providing compensation for losses including property damage directly suffered by the insured. Even consequential pecuniary losses such as a loss of use or loss of production due to the destruction of moveable or immoveable property may be covered.

As a result of Austria's booming real estate market, first-party property insurance modules with a focus on immoveables are becoming increasingly popular. Other insured risks under local first-party property insurance modules include vehicles or personal belongings.

21 How is property valued under first-party insurance policies?

Most insurance terms will contain stipulations as to the assessment of value. While similarities between policies and conditions concerning the same insured risks may be observed, the individual provisions all differ in detail, one major distinction being whether the assessment of value takes into consideration the difference in value where 'used' things are replaced by 'new' things. Such deduction – the 'old-for-new' rule – is the general rule under the Austrian law of obligations.

Directors' and officers' insurance

22 What is the scope of D&O coverage?

As indicated above, typical claims-made policies such as D&O insurances are, in concept, somewhat alien to the Austrian insurance market. Thus, statutory provisions as to the scope of coverage do not exist.

Historically, a large number of D&O policies locally available could be described as having gone through a 'two-step import' process. This is because, by comparison, the Anglo-American D&O model first gained importance on the German market. The significance of D&O coverage for the Austrian market emerged only later when policies and conditions were drafted – or more often, amended – based on the insurers' experience gained on the German market. Of course, some D&O products were also drafted directly by Austrian insurers. However, suggesting that these products were completely unbiased from the experiences on other European markets would be short-sighted.

While there is definitely increasing demand for D&O coverage in Austria, insurers should be wary of merely 'importing' foreign D&O products without consulting with local experts. The gap between Austrian and German law, for example, is not necessarily a big one when compared with other legal systems. Experience shows, however, that insurers are well advised to become familiar with these differences in substantial and procedural law before finding out the hard way (ie, after the occurrence of an insured event). This advice should be heeded especially in light of the fact that D&O coverage is relatively cheap on the local market.

The scope of coverage as defined in the typical policies and conditions available, differs in detail. Such differences may concern, inter alia:
- the definition of 'pecuniary loss' (covered) and its differentiation from pure financial loss (usually not covered);
- the definition of 'intentional non-compliant acts' as an exclusion of coverage;
- the group of insured persons (eg, inclusion of managerial employees and compliance or data protection officers);
- the group of insured legal entities (eg, inclusion of subsidiaries and affiliated companies);
- the temporal scope, including retroactive coverage as well as run-off cover;
- the insurance deductible (if any); and
- the number and type of modules included such as the insurer's duty to defend or to satisfy, a criminal defence module or the inclusion of legal expense insurance.

Most D&O policies cover both claims of the insured company vis-à-vis an insured person as well as claims brought by a third person against the insured manager or executive.

23 What issues are commonly litigated in the context of D&O policies?

The issues most commonly litigated in D&O disputes – aside from possible recourse proceedings initiated by the insurer after having provided coverage – could be divided into two groups.

The first category concerns differences in interpretation. As indicated, this common cause of conflict is amplified by the specific characteristics of the Austrian insurance market (see questions 2 and 22). Even where the relevant wording is seemingly unambiguous, conflicts may revolve around the question of the validity and effectiveness of such provision (eg, a number of D&O policies include coverage of fines and

other monetary penalties – a stipulation considered to be against public policy and thus invalid by the courts).

The second category relates to factual circumstances material to the possibilities for action on the insurer's side. Can the insurer prove that the policyholder violated its pre-contractual duty to disclose, for example by giving incorrect or incomplete information in the questionnaire submitted by the insurer prior to taking out insurance? Can the intentional violation of the insured's obligation be established with the consequence that the insurer may deny coverage or, where applicable, revoke a cover note and to reclaim past insurance payouts?

Cyber insurance

24 What type of risks may be covered in cyber insurance policies?

Contrary to expectation, cyber insurance does not (yet) play a major role in Austria. This is not to say that cyber insurance policies or supplementary modules were uncommon. In fact, a number of larger enterprises and even SMEs have opted to extend the coverage accordingly; supplementary modules being offered by most insurers. This (cautious) trend does, however, not seem to align with the ever-growing risks of cyber attacks (eg, viruses, hacks, exploits) and the increasing dependency on electronic infrastructure such as personal computers and file or email servers.

While some cyber insurance policies include only losses suffered by a third person – for example the results of a data leak after a successful cyber attack – others also include losses directly suffered by the insured. The latter category may include the consequences of server downtime or of 'stolen' company secrets as well as costs for external technical support.

25 What cyber insurance issues have been litigated?

As cyber insurance products are relatively new – or rather, not yet sufficiently common – on the Austrian market, no case law of relevance in this regard has been published yet. One reason for this lack of litigation may be connected to the circumstances of a dispute relating to a cyber attack: the insured may be reluctant to conduct court proceedings against the insurer when such proceedings could affect the company's reputation, such as by making public successful cyber attacks.

Terrorism insurance

26 Is insurance available in your jurisdiction for injury or damage caused by acts of terrorism and, if so, how does it generally operate?

Terrorism insurance policies or modules are currently not of notable relevance on the Austrian insurance market. The reason for the lack of demand for such products may be connected with the high general feeling of security among the population. According to the 2016 Global Peace Index, for example, Austria is conceived to be the third-safest country in the world.

A spike in awareness has been observed shortly after the 9/11 attacks but has since decreased again. One of the repercussions of that time was the setting-up of a mixed co-insurance and reinsurance pool by the Austrian Association of Insurance Companies. This pool was established in October 2002 and aimed at granting affordable property cover against terrorism exposure.

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