

AN INSURANCE BROKER'S GUIDE TO After The Event Insurance for Commercial Litigation

What is ATE Insurance?

After the Event (ATE) Insurance is a policy that is taken out after a dispute has arisen to protect the insured against their liability for their opponent's costs in the litigation as well as, typically, an element of the insured's own legal costs.

Why is ATE Insurance Different?

When the insured is successful in their claim, either by way of judgment or settlement, the premium for an ATE policy is recoverable from the opponent as part of the insured's costs of the litigation. This unique arrangement was introduced by S.29 Access to Justice Act 1999. There is no entitlement to recover premium for a "before the event" policy such as a legal expenses policy bought in the event that some dispute may arise at some future date.

As a result of this change, Temple introduced deferred premiums for ATE insurance, which have now become standard in this market. The result is that the insured has no obligation to pay the premium until the claim is successful when the premium is recovered from their opponent.

What happens if the claim is not successful?

Should the claim fail, there is no premium to pay because the premium for the policy is self insured and is included as an insured disbursement under the policy. This further innovation, which has also become standard in the market, was also first introduced by Temple.

Why Do I Need to Know About ATE Insurance?

As an insurance broker you need to be in the best position to advise your clients how to manage their risk with the use of insurance products. The premium for ATE insurance provided by Temple is only payable at the end of the litigation, i.e. when the case is settled or won. Therefore, there is, in practical terms, no requirement for your client to pay any premium because at that stage the premium is payable by your client's opponent.

Crucially, if the case is lost, the premium is insured under the policy. Therefore, in effect, your client has no premium to pay.

Your client can have the peace of mind to pursue their legal action with the confidence that, if they lose, they will not have to pay their opponent's legal costs.

What Are the Opportunities for Earning Commission?

There are significant opportunities to earn commission. The premiums Temple charges are stepped and increase at prescribed stages as the litigation progresses. The rates on line, in the later stages of litigation, are significant and can be as high as 75% to 80% of the (typically) substantial sum insured. Premiums of these levels have regularly been upheld to be recoverable from an unsuccessful or paying party to the litigation.

Temple will agree a commission rate with you at the outset and will pay commission following the successful recovery of the premium from the insured's opponent. ATE insurance has largely centred around the personal injury litigation market over the last decade. Temple have also been insuring commercial litigation over this period, nevertheless only a relatively small percentage of commercial litigation in the UK is insured at the current time. As a result this is a significant market for growth. Please refer to the case study below.

What type of claim is suitable for ATE Insurance?

Any type of commercial claim proceeding in England and Wales which can either be litigated or arbitrated and that has reasonable prospects of success, excluding divorce and related family litigation; Temple have had considerable experience of insuring a wide range of commercial disputes.

Temple insures both claimants and defendants (although not in the same litigation!) but predominantly insurance is provided to claimants.

Solicitors, under their Code of Conduct, are required to find out if their client has any insurance that can assist them in funding the litigation and if not to alert their client to the possibility of ATE Insurance for the dispute.

It is our experience that solicitors, all too frequently, dismiss the prospects of obtaining ATE cover either because they are unaware of the availability of the insurance or they assume that their client will not be prepared to pay a premium, not realising that Temple's product requires, effectively, no payment of premium.

In some instances, solicitors are simply not aware of ATE insurance or their obligations under their Code of Conduct; ignorance which exposes them to professional liability claims.

Why Recommend Temple?

- Temple is one of the market leaders in the provision of After the Event Insurance
- It has significant experience of insuring a wide range of commercial litigation
- It is based within England and is backed by A rated insurance
- The premium is payable at the end of the case
- The premium is self-insured and so will not be paid by your client if the claim is unsuccessful
- It is reputable when dealing with claims which it pays swiftly
- The premiums are “stepped”, i.e. increased at certain stages of the claim; this can assist in negotiations and is an approach endorsed by the Courts, aiding recoverability of the premium from the opponent when the case is successful.

What are the key features of Temple’s insurance?

- Cover for opponent’s costs and own disbursements (such as expert witness fees and court fees)
- Cover for opponent’s costs and own disbursements already incurred
- Premium under the policy if unsuccessful, or discontinued with Temple’s consent
- Stepped premiums whereby the premium increases in identified stages at key points in the litigation
- Cover for all types of claimants including businesses of all sizes, organisations, charities and individuals
- Cover for all types of commercial litigation or arbitration, including contract, property disputes, professional negligence, defamation and insolvency
- Limit of Indemnity of up to £5 Million.

What Are the Ways in Which Temple Can Assist Your Clients?

1. On a case by case basis

The brokers effects the introduction of a firm of solicitors to Temple and the solicitors then insure their client's claims with Temple on a case by case basis on the completion of a proposal form.

2. Under a Delegated Authority Scheme

You introduce a firm of solicitors to us with whom we are able to agree a scheme under which the solicitor has delegated authority to insure certain types of cases falling within pre-agreed criteria.

Case Study

Broker introduces firm of solicitors Allitigators & Co to Temple in Year 1:

During year 1 Allitigators & Co insure 10 actions with Temple with an average Policy limit of £200k:

3 actions settle in year 1 pre litigation

Generates premium of say £30k

Commission at 15% £4.5k

2 actions settle in year 1 after litigation

But more than 45 days pre trial

Generates premium of say £50k

Commission at 15% £7.5k

1 action lost abandoned in year 1

Generates premium of £nil

Commission nil

2 actions settle in year 2

Less than 42 days before trial

Generates premium of say £240k

Commission at 15% £36k

2 actions settle in year 2
More than 42 days pre trial

Generates premium of say £60k
Commission at 15% £9k

Total Commission £57,000

This is a realistic example of how much commission can be generated from one firm of solicitors in one year in respect of commercial litigation. After the broker has introduced a firm to Temple, the broker will receive a report from Temple every 3 months demonstrating how much commission is anticipated, depending upon which stage in the litigation the claim has reached, less any commission already received. Commission will be paid shortly after the premium has been received.

For further details please contact Temple's Underwriting Director Michael Lent.

Telephone: 01483 577 877

E-mail: Michael.lent@temple-legal.co.uk

DX: 83188 Guildford

Post: Temple Legal Protection Limited

Portsmouth House

1 Portsmouth Road

Guildford

GU2 4BL