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**Working Group Report  
Litigation and Contracts  
Eurojuris Frankfurt 11/10/2019**

32 participants: USA, Netherlands, France, United Kingdom, Italy, Belgium, Denmark, United Arab Emirates, Germany, Finland, Poland, Thailand.

**1. Visit to the Frankfurt Chamber for International Commercial Disputes.**

Welcome by Judge Felix BERGMEISTER.

The Court consists of 3 Judges, 1 professional, 2 company directors.

The language used is:

- English for oral arguments, hearing of witnesses.  
Documents in English do not need to be translated.
- German for referral requests, submissions or briefs, judgments.

Average trial time: +/- 10 months.

The applicable law is the one chosen by the parties. Otherwise: German law.

Lawyers' fees are borne by the losing party according to a scale on which lawyers agree.

Court fees are a percentage of the amount of the litigation.

At the moment, there is only one Court. The Court of Appeal is in the process of being established.

## **2. Arbitration in the United States.**

**By Stacey BARNES (Houston).**

Presentation of a comparison between the proceedings before the Arbitration Chamber of the International Chamber of Commerce (ICC) and the ICDR which is a U.S. Chamber.

The fees are lower.

Issues of independence and experience are dealt with at the time of the appointment of arbitrators.

The applicable law is decided by the Court of Arbitration, if it is not defined by the parties.

There are systems of urgent measures, the possibility of appointing an expert within the day.

The rest of the proceedings are explained in the presentation which will be sent to the participants.

He stressed the importance of drafting the arbitration clause.

## **3. Litigation funding in the United-Kingdom.**

**By Luc HARRISSON (solicitor).**

The issue is not regulated by law.

It is a process that will be explained in the presentation which will be sent to participants and is to assist in the financing of litigation by investors and companies who, obviously, make money on the outcome.

An initial analysis of the case is carried out.

A contract is signed between the investor and the client "Litigation Funding Agreement" (LFA).

The investor is not allowed to terminate the contract on his own initiative.

## **4. Limitation of liability in contracts and insurance cover.**

**By Alexandra GANZ-COSBY - ARTUS (insurance broker) and Thierry CLERC (Lawyer France).**

What can be insured and what cannot be insured?

Product defects cannot be insured, but transportation costs, various costs associated with product replacement and also the customer's operating loss can be insured.

Civil liability is also held for the product that causes harm to others.

In Germany, late penalties are not insurable.

On the other hand, liquidated damages are.

Force majeure is insurable.

Litigation costs are insurable provided they have been provided for in the policy, including arbitration.

Whether the insurer can deny its cover after assisting or representing its insured during a survey depends on the legislation.

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Next meeting: Edinburgh on 08/05/2019.

The following topics will be discussed:

- The liability of directors and board members in cases of antitrust violations in Germany, by Christoph HERRMAN, lawyer (Germany).
- Exequatur of court decisions outside Europe by Christian SCHLEMMER (Germany) and Naveen INDRAKANTI (Dubai).
- What clauses survive after the end of the contract by Thierry CLERC (France) and Moritz SCHUMANN (USA).
- Other topic to be chosen with MBM Solicitors in Edinburgh, a Lawnet member, for example on the latest contract developments in Scotland, in particular due to Brexit, and Charlotte CLODE from FBCMB( UK) and perhaps a presentation from a professor of law on the subject.

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