

Adverse costs cover

The policyholder insures against the risk of adverse costs, i.e. their potential liability for the opponent's legal costs if the case is discontinued or lost at trial. A costs award is made against the policyholder.

This product covers the policyholder's potential liability for 100% of their opponent's solicitor's fees and 100% of their opponent's disbursements (including barristers' fees) up to the limit of indemnity provided under the terms of the policy.

This cover can be purchased standalone, or in conjunction with our own side solicitor's fees cover and/or own side disbursements cover.

Case Study

The claimant, a global wine merchant, brought an action in the High Court against a well-known London firm of solicitors for negligence for circa £50 million.

What happened?

The action was brought with the benefit of litigation funding, and Harbour Underwriting provided cover for adverse costs. In addition, as the claimant was based overseas, security for costs was given to the defendant by way of a deed of indemnity.

The claimant's solicitors and barristers, including Queen's Counsel, agreed to reduce their usual hourly rate in return for a share of the monies recovered illustrating their collective confidence in the action succeeding. The action proceeded to trial.

Outcome

Despite receiving witness training before the trial, the claimant undermined his own case when being cross-examined. Given it was clear that the court would reject the claimant's evidence, the action was settled on the basis that the defendant's costs would be paid. We were kept advised of developments throughout the hearing and agreed to the claimant discontinuing the action on this basis, and adverse costs were paid out under the ATE policy.

Summary

Despite the confidence in the action from the litigation funder, insurers and the claimant's legal team, this action demonstrates the inherent risks of going to trial. In this case, the witnesses did not perform well on the day - one of the many risks of litigation. Winning at trial can never be taken for granted, and this is why ATE insurance should be obtained even in the cases where parties are confident about their chances of success.