



Commercial ATE Insurance

What is Commercial ATE?

Commercial 'After The Event' insurance can be taken out by the Claimant in a legal action to cover the defendant's costs, own party disbursements and possibly some own solicitor's costs in the event that the case is lost and an award of costs is made against the Claimant. It is usually used in conjunction with a conditional or part conditional fee agreement with the Claimant's solicitor.

Important features

The following are important features which prospective purchasers of ATE and their solicitors should consider.

- **High quality insurer with excellent credit rating for maximum security**
'A' (excellent) rating from A M Best
- **Premium recoverability**
Premiums are structured to ensure that they are amongst the most competitive in the market to maximise premium recoverability.
- **Quotation Service Standards**
We undertake to provide or decline to offer terms within ten working days from receipt of all required documentation. Where requested we can endeavour to reduce this time in special circumstances.
- **Encouraging dispute resolution**
No one wants to end up in court with all the attendant costs and risks. The discount structure operated by Insurers rewards early settlement by the defendant with substantial premium discounts thus incentivising the defendant to make offers at the earliest opportunity.
- **Experience in commercial litigation**
LFI have extensive experience in commercial litigation and arbitration in many different areas of law. The understanding gained from this experience results in a really professional service for the insured and their solicitor.
- **Premium deposits**
Generally premium deposits by the insured are not required unless the litigation is close to the trial date or there are potential issues over enforcement.
- **Insolvency cases**
For cases brought by an administrator, receiver or liquidator on behalf of an insolvent company, no premium deposit is required.
- **The Jackson reforms**
In April 2013 reforms to the rules on recoverability of premiums come into force and these premiums will not be recoverable in litigation. For all litigation commenced before April 2013 ATE policies can be taken out and will be recoverable. However, we are developing new products for the new environment which will be available next year.
- **The disadvantages of commercial ATE**
Put simply there are none. Obtaining insurance is a strong endorsement of the merits of your case. In the event that you win your case the defendant will pay the insurance premium so your damages award (or settlement) will not be affected by the premium. In the event you lose, the other party's costs together with your own disbursements (subject to the cover purchased) are met by the insurance indemnity. So for any claimant ATE is a total 'win/win'.



Practical Notes:

Applying some consideration to the presentation of the case can be invaluable, it is imperative to ensure that the case is presented in a clear and concise format. The following are some key points to consider:

- ***Provide a case summary***

Whilst the pleadings or Counsel's advice (if available) may well provide a useful summary of the background and important facts, insurers generally like to see a short summary from the instructed lawyers setting out the circumstances and the proposed case strategy.

In some cases, a chronology of the key events in the case and the proceedings is an invaluable presentation tool. Likewise, in complex contractual disputes, a graph or diagram to explain the role of each party involved can speed up the application process and provide clarity.

- ***Detail why you believe your client is likely to succeed***

If you believe the client has a good chance of success, then it is helpful to summarise why you believe this to be the case. This will demonstrate to the insurer that you have considered the issues and will show how you have arrived at your reasoned conclusions.

Where possible, comment on any commercial aspects of the case which you might feel will not be readily apparent from the pleadings or correspondence. If there are settlement pressures at key stages, highlight them and explain why they exist.

A useful approach is to pre-empt the opponent's possible arguments (if they are unknown) and detail why you believe that such arguments are flawed. You should always bear in mind that the insurer is an independent third party with no prior knowledge of the case, so it is crucial to provide enough information to enable them to understand your assessment of the merits.

- ***Detail your view on claim value (if monetary remedy) and enforcement***

A realistic valuation of the claim is always important; you will need to be confident that the estimated claim value is as accurate as possible and that there is a good chance that any award will be enforceable. The proposal form contains some questions on this issue, however where appropriate, please provide any additional information in your case summary, including what steps have been taken to ensure that the opponent will be able to satisfy any award, if they are not insured.

By default, insurers offer quotes with deferred premiums but a high proportion of the rejected cases are rejected due to lack of certainty with regard to enforcement so if enforcement is a perceived risk in your case, consider whether the client has the appetite for the funds to remove that risk from the insurer by paying some or all of the premium upfront.

- ***Supply the material documentation in support of the case***

Whilst insurers will take into consideration the solicitors and/or Counsel's views on the prospects of success, ultimately they will need to form their own views on the merits of the case.

Accordingly, it is necessary for insurers to see all the material information in support of the case. That said, if the documentation is particularly voluminous, with some information less relevant than others, then it is generally prudent to inform the insurer that you are supplying what you consider to be the material documentation but that additional documentation can be made available if required upon request. A schedule of the documents that are available can be a very useful way of achieving this.

- ***Refer to key documents***

Remember, you will know the case better than the insurer. Accordingly, to save time it can assist to highlight the crucial supportive documents in your case summary.