WILLIS PROPERTY INVESTORS DIVISION
NEWSLETTER
SEPTEMBER 2011 WWW.WILLIS.COM

RIGHT OF LIGHT INSURANCE

Willis Property Investors Division is delighted to announce the arrival of Fraser Pratt.

Fraser is regarded as one of the leading experts in the provision of insurance solutions for Right of Light issues.

The team will be further strengthened by the arrival of another highly regarded authority in this area, Dean Perkin, who will join the team in November.

In this newsletter Fraser considers how insurance can be utilised as part of a Right of Light strategy.

There has been a great deal of publicity regarding Right of Light and in particular around the case of HKRUK II (CHC) Limited v Heaney (2010), where the courts awarded a mandatory injunction against a completed building. This was contrary to the expectations of many experts in the field. The decision was due to be the subject of a high court appeal but this was settled out of court before the appeal was heard.

Much has been written about the impact of this decision on developers and developments, our focus is on the insurance market and how, with the right advice and guidance, you can find a solution that can form an effective part of your overall Right of Light strategy.

When considering Right of Light (ROL) insurance, it is important to know that there is a significant amount of information required by each underwriter in order to accurately assess each risk. If left to an insurance broker with limited experience in this field, this could mean that you end up paying unseen additional costs (usually legal fees) in addition to causing unnecessary delay to the start date of the project, as well as running the risk of hindering your funding arrangements and/or the sale of the property. ROL indemnity insurance is a specialist subject and it often takes an experienced eye to correctly identify and address the issues surrounding an enquiry in order to form an appropriate, tailored insurance solution to meet your specific demands and needs.

The Solutions:

1. **Insurance can be used to complement an existing strategy by insuring some or part of the neighbouring properties identified within the Right of Light report (we would be very happy to discuss particular requirements with your Right of Light consultants).**
2. **An insurer may be able to provide an insurance policy to cover off all of the affected properties highlighted in the Right of Light report, and therefore completely remove the need to enter into discussions with any of the surrounding affected property owners.**
3. **An insurer may be willing to provide a policy that covers off all neighbouring properties. A policy that covers off all neighbouring properties, including those not highlighted in the Right of Light report, means that the policy will also act as a contingency to pick up 'nuisance' claims.**

At this point it is important to understand that ROL insurance is not a magic bullet and occasionally a risk may be deemed uninsurable. In the vast majority of situations however, a solution can be found, and using an experienced broker will ensure that this happens more often than not. Whilst insurance cannot remove the risk of insurance, it does:

1. Act as a financial risk transfer.
2. Ordinarily provide a more cost effective solution than having a ROL surveyor negotiate estimates.
3. Offer a speedier solution, as it will remove the risk of your surveyor engaging in protracted negotiations with no guarantee of an amicable solution should the affected party be unwilling to negotiate or discuss a settlement.

PARTY WALL ACT AND OVERSAIL NEGOTIATIONS

Currently one of the biggest issues facing developments from an underwriting perspective is when there is a requirement for discussions between the proposed insured and any of the affected properties; this could be Party Wall Act Awards, Oversail agreements or any other formal conversation which is required between the two parties prior to the commencement of or during the development.

Whilst underwriters are conscious of the fact that these conversations must take place, their concerns lie in the fact that opening a dialogue with an affected neighbour offers a formal platform for them to raise 'light' or 'Right of Light' as an additional issue. It is worth pointing out here that the underwriter's concerns in this area are not unfounded, as there have been a number of cases recently where Right of Light claims have been notified as a result of these discussions.

So how do we convince an underwriter to offer a Right of Light insurance solution for properties when there is a Party Wall Act Award negotiation required?

For us, this comes down to understanding your risk by ensuring that we have asked and gained answers to the right questions relating to this process in order to deliver the information appropriately to the ROL insurers. Of course, this cannot always guarantee that full cover is granted and this is where the experience of your broker should be able to assist, as bespoke solutions can often be found to accommodate the risk within the cover.

As the complexities of a site are often not highlighted until the underwriting investigations have commenced, this can, and often does, lead to the insurance forming the last piece of the jigsaw. Each development is unique and contains its own specific challenges but the key throughout the whole insurance process is to choose the right advisor to help you navigate through the mountains of documentation requested and numerous questions asked by each insurer, both quickly and effectively, in order to deliver an insurance product that adds real value.

We have been successful in arranging Right of Light insurance for a number of sites where insurers' initial consensus was that insurance cover would not be available, and we have worked with clients and insurers to find solutions around problematic properties. Again it is worth mentioning that insurance is not always able to solve all your Right of Light issues. However with the right advice and guidance, it can be a cost and time effective tool to enable you to appease funders and/or joint venture partners who have serious concerns in this area.

For further details about Right of Light insurance or any other Legal Indemnity matters, including Judicial Review, Village Greens etc, please contact Fraser or one of the team on the details shown below.

Property Investors Division
Willis Limited
Level 11, The Willis Building
51 Lime Street, London, EC3M 7DQ
United Kingdom

For further information or advice, please contact your usual Willis Property Investors Division representative or any of the following contacts:

John Dilley – Managing Director
Tel: +44 (0)20 3124 6233
Email: dilleyj@willis.com

Paul Turnbull – Client Service Director
Tel: +44 (0)20 3124 6253
Email: turnbullp@willis.com

Ian Kennett – Director of Sales
Tel: +44 (0)20 3124 6330
Email: kennetti@willis.com

Mike Carolan – Construction Director
Tel: +44 (0)20 3124 6229
Email: carolanm@willis.com

Matthew Hellyer – Business Development Executive
Tel: +44 (0)20 3124 8354
Email: hellerym@willis.com

Mark Landau – Business Development Executive
Tel: +44 (0)20 3124 6204
Email: landauml@willis.com

Fraser Pratt – Business Development Executive
Email: fraser.pratt@willis.com
Tel: +44 (0)20 3124 8778

Should you require further copies of this newsletter, wish to receive future editions by email or notify us of any changes to your address please contact **Kirstie Blyth** on +44 (0)20 3124 6656 or by email: blythk@willis.com

This bulletin offers a general overview of its subject matter. It does not necessarily address every aspect of its subject or every product available in the market. It is not intended to be, and should not be, used to replace specific advice relating to individual situations and we do not offer, and this should not be seen as, legal, accounting or tax advice. If you intend to take any action or make any decision on the basis of the content of this publication you should first seek specific advice from an appropriate professional. Some of the information in this publication may be compiled from third party sources we consider to be reliable, however we do not guarantee and are not responsible for the accuracy of such. The views expressed are not necessarily those of the Willis Group. Copyright Willis Limited 2011. All rights reserved.

Willis Limited, Registered number: 181116 England and Wales. Registered address: 51 Lime Street, London EC3M 7DQ.
A Lloyd's Broker. Authorised and regulated by the Financial Services Authority for its general insurance mediation activities only.

FP1188/10009/09/11