

Report of the joint meeting of the AIDA Dispute Resolution WP and the Motor Insurance WP.-

7th AIDA Europe Conference April 12- 13. 2018

The meeting took place at Warsaw Sofitel Victoria 13th April 2018 and was chaired by Chris Rodd (Australia) and Prof Sara Landini (Italy) .

The topic:"After Dieselgate"

The presentations and the discussion dealt with actions against VW in relation to the Diesel emissions scandal and in general on the protection of consumers in case of misleading environmental claims involving the vehicles manufactured by VW and its related corporate entities .

The Speakers were

Chris Rodd- (Australia) "After Dieselgate –An Australian Perspective"

Ilaria Garaci and Roberta Montinaro (Italy) - "After Dieselgate".

The situation in Italy" Part I and Part II

Ronit Warshai,(Israel) "Volkswagen emissions scandal Legal Actions in Israel"

Richard Traub (USA) "Weiselgate – and Post Apocalyptic USA"

It emerged that consumers found protection in the speakers countries, largely through the mechanism of litigation.

There was clearly the case in Australia and the USA , where legal proceedings, via class actions were currently before the Courts . Notably in Australia the class action is also being supported through the litigation process, by the Corporate Regulator. This is seen as the conventional mechanism for the settlement of class action related disputes in Australia.

Richard Traub gave an outline of the picture in the USA , largely focussing on the sums of money involved in the settlements . There was also an outline of the substantial penalties and fines imposed by the US regulators which is in marked contrast to what is currently being observed in Europe . It was clear that as the emissions controls in the US are stricter than Europe than the US correspondingly substantial penalties have been imposed because of what was viewed as a flagrant breach of US laws.

In Europe and notably Italy, one of the evidentiary hurdles is proof of loss or damage. The speakers observed that evidence of consumer harm in these cases was difficult to establish, with no clear indication that claimants could prove a loss arising from the actions of VW.

From an insurance perspective, insurance companies did not consider that the policies respond to indemnify VW and its related entities due to the "deliberate acts" policy exclusion. The argument being that the D& O cover similarly does not respond to indemnify for loss or damage given the acts of the principal officers ,were intentional .

We also had an Israel perspective in which it was noted that while litigation is on foot it is likely to see a slow progression through the legal system.

Participants, and attendees :

Aurelio Aselmo, Liliana Caldeira, Massimo Dotto, Alexander Urian, Taisto Hujala, Juan Pablo Sainz, Sandra Ramirez, Jowser Zabala, Ralph Hofman, Jorge Angell, Tuomas Sanzalam, Nikla Langeskiold, Dilsad Kyguoglu, Joanna Grzejdiali, Tim Hardy, Colin Croly, Paolo Rainelli, Loer Ivar Sovinger, Ronit Warshi, Peggy Sharon, P. De Vasconcellos, Ilaria Garaci, Roberta Montinaro, Herman Cousy, Richard Traub , Chris Rodd , Sara Landini .