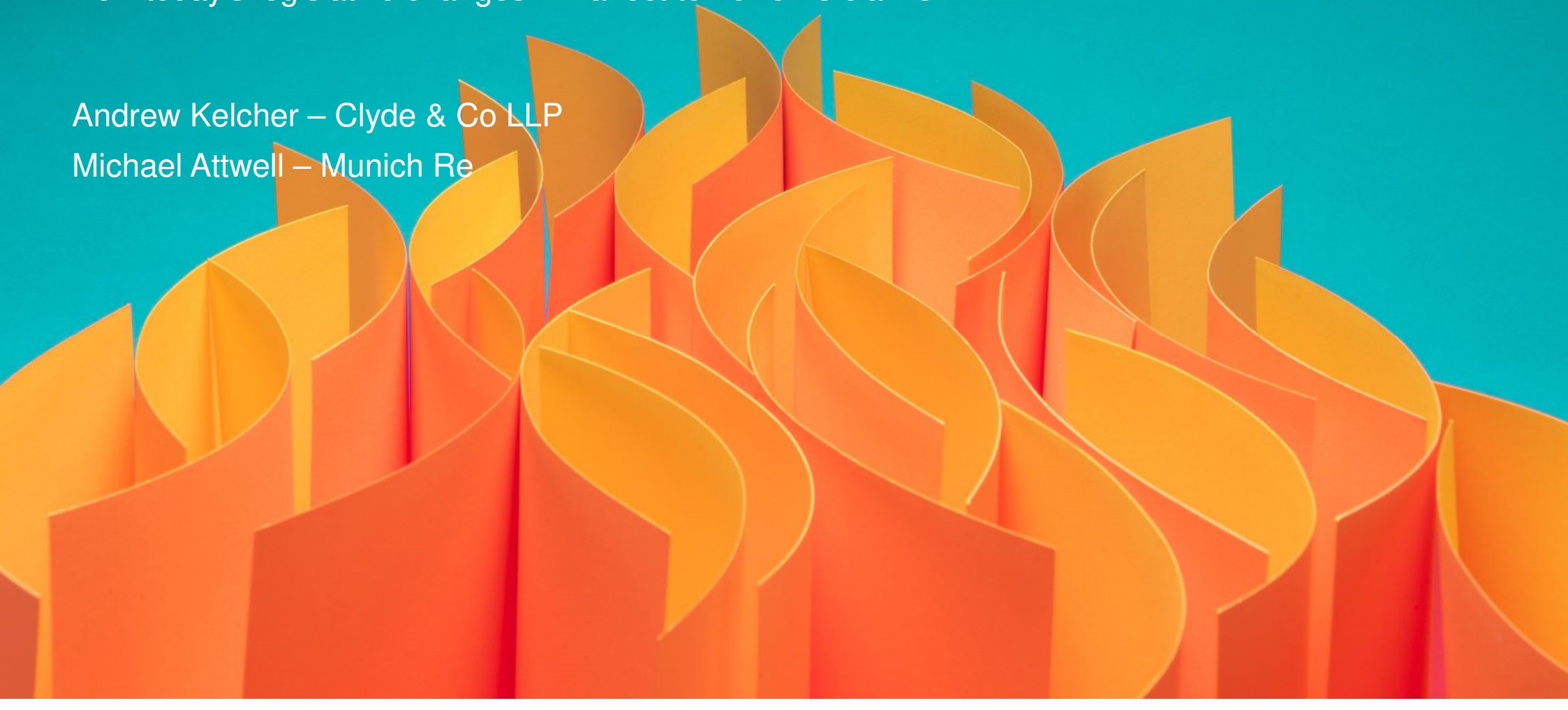


Construction Professional Indemnity

How today's legislative changes will affect tomorrow's claims

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Three little pigs – Key characters & terms

1. Farm Owner: Mr Jones – *“Pig Ideas”*
2. The pigs: Napoleon, Snowball & Old Major
3. Builder / Design & Build Contractor: Mr Smith – *“Pig Build”*
4. Developer: Mr Brown *“Piggy Bank”*
5. SPV: *“Laing O’Pork”*
6. Manufacturer: *“Pigspan”*
7. Insulation: *“Pigs Blankets”*
8. Law firm: *“Bacon Mackenzie”*
9. Mr Wolf: Big Bad Wolf



Claims & actions

1. Building Liability Order (“BLO”) against *“Laing O’Pork”*
2. Remediation Contribution Order (“RCO”) against Mr Jones (as landlord)
3. Particulars of Claim v *“Pig Ideas”* and *“Pig Build”*
 - A) Failure to meet the duty-holder requirements
 - B) Breach of obligations under the Building Regulations
 - C) Unfit for habitation purposed under the DPA 1972



What changes will the BSA introduce?

1. New regulatory regime
2. Expanded causes of action
3. Piercing of the corporate veil
4. Expanded retrospective and prospective limitation periods



New regulatory regime

1. Applies to *“higher risk”* buildings (predominantly)
2. Building Safety Regulator to be the building control authority
3. Duty-holder regime / Accountable person
4. *“Golden thread”* of information
5. Gateways 1 – 3



Expanded causes of action

1. Defective Premises Act 1972
2. Section 38 of the Building Act 1984
3. Liability of construction and cladding manufacturers
4. Sections 147 – 151 of the BSA (Conditions A – D)
5. Remediation Costs



Piercing of the corporate veil

1. Building Liability Orders (“BLO”):
 - A) Relevant liability
 - B) Joint and several liability
 - C) BLOs will be granted where it is *“just and equitable to do so”* – *Re Klimvest Plc* [2022] EWCH 596 (Ch)

1. Remediation Contribution Orders (“RCO”):
 - A) First tier tribunal empowered to make RCOs
 - B) Interested persons can apply
 - C) Effects of RCO



Expanded limitation periods

1. Under the DPA 1972
 - A) 15 years from date of PC
 - B) 30 years for buildings completed prior to 28 June 2022

2. Actions relating to construction products:
 - A) 15 Years for claims brought under ss 148 and 149 of the BSA 2022
 - B) 30 years for claims related to “*cladding products*” where cause of action before 28 June 2022



Impacts on insurers?

1. Overall the Act is a positive development for all
2. Duty holder obligations – new strict liability?
3. Resurrected claims
4. Contribution claims v construction and cladding manufacturers
5. “Gateway” delays – who pays?
6. Claims for death / mental distress – covered under your policy?
7. Pure economic loss?

