In a Zoom meeting of AIDA Israel which was held on 12 August 2020, the following topics which interest the insurance industry in Israel and in the world were discussed:

A. Is Covid-19 force majeure?
B. The new Covid -19 policy exclusion.
C. The foreign Insurers right of subrogation in Israel.

A. **Adv. Azrielle Rotman of the Naschitz Brandes Amir** Law Firm gave a lecture on the question whether the defence of Frustration of Contract may be raised due to the Covid-19 crisis, reviewing the rigid approach of the Courts in Israel so far. In almost all cases in which frustration was argued, the Court dismissed the argument that circumstances such as war, extreme natural events etc. were unforeseeable.

Recently, the duty of good faith of the contracting parties was raised as a possible solution for unexpected events and maybe it is possible to use it for finding a good solution for these cases.

In addition, the Interoffice Team that was established by the Ministry of Justice in order to formulate guidelines for settlement of contractual disputes due to the crisis, did not result in conclusions or directives but rather in recommendation to the parties to renegotiate the contract terms in good faith.

The recent judgments of the Courts of the lower instances present contradictory decisions and by the time the appeals would reach the Supreme Court and we will have a binding authority, one should expect a different result in each specific case .

B. **Adv. Sigal Schlimoff of Gross Orad Schlimoff** Law Firm, representative of Lloyd's in Israel, reviewed the current position of reinsurers and world Insurers following the Covid-19 and expressed the view that this crisis, which had a very bad impact on all the fields of insurance, is an event which should be dealt with by the governments and not by Insurers.

The vast and unprecedented scope of the pandemic and the financial crisis which followed it is a critical and unexpected event different from anything we knew before. In view of that, an exclusion of Covid 19 was drafted by Insurers for all policies including property and liability.

Adv. Schlimoff reviewed two wordings according to which any loss or damage which results from local epidemics, global pandemic, viruses, diseases etc. will not be covered. In the discussion which was held by the participants different views were raised.

First of all, it was argued that placing such an exclusion in property policies which anyway cover physical damage to property, may raise an argument that the as the current policies do not have this exclusion, they should cover Covid-19 losses. Secondly, the justification to exclude a

pandemic of such dimensions does not justify the exclusion of viruses and common diseases. The Regulator of Insurance in Israel is silent concerning this ,which is not exceptional as all regulators around the world have not yet declared or given guidance to Insurers concerning the exclusion.

The insurance consultants, Firer and Orland, commented on the vast impact which these exclusions may have on liability insurance including the D&O and professional liability insurance. It is possible that the exclusion will be mitigated in negotiations between the parties. Also, the market powers will as always be activated and will fill the vacuum by new policies which will cover losses resulting from pandemics.

C. **Peggy Sharon of Levitan, Sharon & Co.** reviewed the contradictory judgments which were given in relation to a subrogation right of a foreign Insurer. According to the judgment in the matter of VIG Vienna Insurance Group v. the Drainage Authority of 2017, the foreign insurer which is not admitted in Israel, is not entitled to file in its name a subrogation claim. Such unadmitted insurer is not included in the definition of "Insurer" in the Supervision Law (Insurance) and therefore cannot be considered as an Insurer to whom the Insurance Contract Law granted Right of Subrogation against the wrongdoer. The judgment was criticized by that it benefited the wrongdoer while not granting any advantage to the Insured which in any case was paid by the Insurer.

In the Haifa District Court in the matter of the ARAS Vessel CHRISOPIGI of 29 November 2019 judge Sokol criticized the VIG judgment and according to his view there is no reason to prevent the foreign Insurer from suing the wrongdoer as this leads to unjustified enrichment of the wrongdoer. In that case, being a marine insurance claim, to which the Insurance Contract Law does not apply, the VIG precedent did not apply.

As compared with that, on 24 November 2019 in the Tel Aviv District Court, Judge Ilani in the matter of Teva v. T&N Goshen decided that the Insured, Teva, which filed the claim against the wrongdoer as the long arm of the Insurer, is not entitled to do that, in view of the VIG judgment of the Supreme Court and the claim was struck out.

These two judgments were appealed and the Supreme Court requested the opinion of the Commissioner of Insurance on the matter. We will follow the appeal and report thereafter.