




Insurance Contract Law Reform

BILA 50th Anniversary Colloquium

Thursday 15th May 2014

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Airmic



Airmic's Agenda

- ❖ Duty of Disclosure and proportional remedies
- ❖ Damages for late payments
- ❖ Warranties and basis clauses

Duty of Disclosure

What do our members think?

- ❖ 52% of respondents are actively concerned about an innocent non-disclosure
- ❖ 17% of respondents have had a claim challenged in prior 3 years on grounds of a non-disclosure

Source: 2013 Airmic Member Surveys

Duty of Disclosure

Why is this happening?

- ❖ The size and complexity of modern multinationals
- ❖ The sheer volume of 'Material Circumstances'
- ❖ The speed of change in business

Duty of Disclosure

What are the consequences?

- ❖ Lack of confidence amongst buyers that they are able to meet disclosure requirements
- ❖ Consequent uncertainty in the effectiveness of insurance as a product
- ❖ Over use of Reservations of Rights
- ❖ Use of non-disclosure as a 'bargaining chip' in claims negotiations
- ❖ Risk of commoditisation of insurance

Duty of Disclosure

Support by Airmic Members of proposed reform proposals

- ❖ 96% urge reform of the 1906 Act
- ❖ 88% support the principle of a fair presentation of the risk
- ❖ 94% say insurers should have an obligation to make 'further enquires' if required
- ❖ 94% support the principle of proportionate remedies
- ❖ 78% support the 'directing mind' principle

Source: 2013 Airmic member surveys

Duty of Disclosure

Consequences of the reform

- ❖ A more active engagement in the underwriting process pre-inception (as opposed to claims underwriting)
- ❖ Less 'data-dumping' by insureds
- ❖ Greater certainty of outcome on major claims
- ❖ More confidence in insurance as a product (= higher prices!?)

Damages for late payments

- ❖ Members are largely unaware about the legal anomaly that classifies claims payments as damages but...
- ❖ This is not generally a concern for Airmic members
- ❖ This is perceived to be more of a SME issue

Warranties and Basis Clauses

What do members think?

- ❖ 33% are 'kept awake at night' by concerns re warranties and basis clauses
- ❖ 20% have had a claims challenge on grounds of breaches of warranties or basis clauses in the last three years

Source: 2013 Airmic member surveys

Warranties and Basis Clauses

Why is this happening?

- ❖ The use of basis clauses has become widespread in the market but they are not transparent to the customer
- ❖ Warranties have been imposed as a substitute for thorough underwriting

Warranties and Basis Clauses

What are the consequences?

- ❖ Incredulity about certain judgements (e.g. Genesis vs. Liberty)
- ❖ Increasing levels of uncertainty about insurance efficacy
- ❖ Reduction of confidence in insurance

Warranties and Basis Clauses

Support for the reform proposals

- ❖ 95% of members support the case for reform
- ❖ 69% agree with the 'suspensive principle'
- ❖ 93% say that warranty remedies should only apply where relevant to the risk
- ❖ 97% say that warranties should only apply if clear, unambiguous and specifically communicated to the insured

Source: 2013 Airmic member surveys

Conclusions

Airmic support the need for urgent reform to help restore confidence in the insurance product and to reduce current uncertainties