

BOOK REVIEWS

Professor Rob Merkin QC*

Leander D Loacker, *Informed Insurance Choice* 2015, Edward Elgar, 293pp plus tables, bibliography and index; Christopher Henley and Simon Kemp, *The Law of Insurance Broking*, 3rd ed 2016, Sweet & Maxwell, 565pp plus tables, index and appendix; Paul Reed QC, *Construction All Risks Insurance*, 2nd ed 2016, Sweet & Maxwell, 838pp plus tables, index and precedents.

It is so refreshing for a reviewer to receive three books with the common theme of insurance law but each entirely different in scope and presentation.

Informed Insurance Choice is an academic study of the pre-contractual duties of an insurer to proffer information to potential policyholders. The author was a key member of the drafting team that produced the Principles of European Insurance Contract Law (PEICL) in 2014, and the book takes a comparative approach between civil law principles and those laid down by the common law. The first half of the text is an economic analysis of insurer disclosure, looking at whether disclosure serves any point at all and, if so, what the optimal level of disclosure might be. The treatment is largely theoretical, and might have benefited from a quick glance at other regimes where disclosure is much more sophisticated, eg, the recent development in Australia of key fact sheets coupled with standard terms and the debate over whether any of that effort actually achieves anything in practice. The second half of the text is a detailed legal analysis of civil and common law approaches to insurer disclosure, with particular focus on PEICL principles and our own ICOBS. The book was written shortly before the passing of the Insurance Act 2015 and its reclassification of the general principle of utmost good faith in section 17 of the Marine Insurance Act 1906 as an interpretative provision, although one replete with possibilities for the extension, and so a part of the analysis of the English cases no longer holds good. There are points which merit further discussion, eg, whether the general civil law principle of good faith really is that different in practice from common law principles relating to contractual interpretation and remedies. Overall, however, this is a fascinating analysis of the issues underlying insurer disclosure and of how PEICL - if ever adopted as the law governing an insurance contract - would operate.

The Law of Insurance Broking, now in its third edition, has grown substantially from the relatively slender text that appeared some 25 years ago. Chris Henley, now joined by Simon Kemp, have produced a comprehensive manual on insurance broking. The approach adopted has been to examine the contract of insurance from formation to claim, setting out the legal principles and the regulatory requirements, and then analysing the role of brokers at every stage. The outcome is a succinct statement of the law of insurance, but flagging the potential hazards faced by brokers. Writing this edition has been complicated by the passing of the Insurance Act 2015, and the authors have for the most part done an excellent job at integrating the measure and comparing the old law with the new. There are some quibbles. The discussion of the relevance of a broker's knowledge in the

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disclosure process on pages 166 to 176 does not there indicate whether the cases decided under section 19 of the Marine Insurance Act 1906 hold good under the 2015 Act or whether now it matters whether the insurer has a claim against the broker. There is no mention of the decision of Reyes J in *Hobbins v Royal Skandia* [2012] HKCFI 10, surely now the starting point for addressing the vexed question of who pays the broker and why it might be important. But of course there is nothing easier than to find fault with the work of another, and overall this book is a substantial achievement, of immense value to practising lawyers and brokers alike. It is always a delight to read Chris Henley's writings, and those familiar with previous editions and indeed his other publications will welcome this new edition.

Construction All Risks Insurance first appeared in 2014. A substantial rewrite was required to accommodate the Insurance Act 2015, and Mr Reed QC, assisted by members of his chambers, has produced a first-rate text on the law of insurance as it relates to the specialised class of construction all risks cover. The first 400 or so pages contain an in-depth analysis of general principles of insurance law, and it is particularly good to see discussion of how some of the new provisions of the 2015 Act might be interpreted by reference to equivalent - albeit differently drafted - measures adopted in Australia and New Zealand. Much of the general material can be found in more detail in the standard texts on insurance law, but the real value of the book is the second half, where the focus is on the application of the general principles to CAR insurance and in particular to the standard terms adopted in such policies. Such detailed analysis, particularly of cases from other common law jurisdictions, is nowhere else available, and proved to be of particular importance to Mr Justice Coulson in *Leeds Beckett University v Travelers Insurance Company Ltd* [2017] EWHC 558 (TCC).

There is no better treatment of co-insurance and subrogation immunity, and fortunately the majority decision of the Supreme Court in *Gard Marine v China National Chartering* [2017] UKSC 35 has left the text relatively unscathed. Overall, this is an authoritative and important work, and the authors should be congratulated for producing a seamless new edition so rapidly after the dramatic changes to the law in 2016.