

BILA 1999 ANNUAL CLAIMS CONFERENCE

An Introduction to the Papers

By James Gerry

Do you remember “Acts of God”? Those were things that happened which were not blamed on anyone in particular, they simply “happened”. Nowadays, one could be forgiven for wondering if God were on holiday, as there is hardly a thing that can happen in our world where someone is not accused of being the “responsible party”. I am reminded of the boss who corrected a subordinate: “I didn’t say it was **your** fault. I said I was going to blame it on you”.

What is more, the so-called “responsible party” is, increasingly, not oneself, but someone else. This attitude towards liability and the apportionment of blame is a global phenomenon, bringing with it constant change to the international liability landscape. Couple this with evolving legislative and regulatory initiatives dealing with issues such as consumer, shareholder, and employee rights, and corporate managers and business professionals suddenly find themselves on the uncomfortable end of a legal action.

And while one could not be faulted for concluding from Keith Fleischman’s paper¹ that the vast majority of corporate directors and officers (in the United States, anyway) are engaged in some form of fraud, **Robert Hildyard** rightly stresses the considerable and “obvious disadvantages in a framework which seeks to control corporate wrongdoing by focusing so heavily on personal liability”.

Thank goodness, then, for insurance! Perhaps not surprisingly, the worldwide demand for directors and officers liability insurance has risen sharply over the past several years. Trading conditions for insurance practitioners are, however, difficult. Indeed, **Pina Albo** concludes that “the same developments which are responsible for generating sales - legislative, economic, cultural and coverage - are also the very reason for the increase in losses”. Most observers would agree that it is a buyer’s market right now, and many underwriters are beginning to feel the pinch. One liability underwriter recently observed: “We are born into this world naked, wet and hungry. Then things get worse”. And at the centre of it all stands the insurance broker.

As the middleman in the insurance transaction, it is the broker’s task to marry-up the requirements and expectations of the buyers with those of sellers. Oh, that it were that simple! In his paper, **Rob Merkin** provides a concise outline of the often conflicting roles and responsibilities of the insurance broker.

¹ Not printed owing to recent cases that have rendered it out of date.

This collection of papers from the BILA 1999 Annual Claims Conference represents an interesting blend of seemingly disparate views on the liabilities of officers, directors and brokers. And yet, taken together, they balance and support one another on a number of common themes. I am sure you will find, like me, that this publication will serve as a valuable and instructive guide.

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