

BILA ANNUAL CONFERENCE: 28 September 2001

Insurance Contract Law Reform

By Derrick Cole

The afternoon session of the Annual BILA Conference on 28th September 2001 consisted of reports from the Chairmen of the Sub-Groups of the BILA Sub-Committee considering problems experienced in the market as a result of the existing law. The Chairman of the session, Gordon Cornish, (a Past Chairman and Vice President of BILA), introduced the subject and referred to the recent lecture to BILA by Lord Justice Longmore who had set out six specific topics which, he suggested, might be addressed. The problem with regard to any reform was not an easy task as the Marine Insurance Act 1906 had taken twelve years to reach the Statute Book. The Law Commission's Report of 1980 on Non-Disclosure and Breach of Warranties which had even included a Draft Bill had not been implemented. It was explained that the findings of the various Study Groups were not the authoritative view of BILA but solely the conclusions of BILA Members who had served on the individual Sub-Groups. The object had always been to identify problem areas and the eventual report of the BILA Sub-Committee under the Chairmanship of Adrian Hamilton QC would be to ask the Law Commission to consider in depth whether there was a need for a completely new Insurance Contract Act or amendments to the Marine Insurance Act 1906 which had been held to apply to Non Marine Insurance, so that the end result would reflect current commercial practice in the market and bring our law into line with other countries in the EU and elsewhere where revisions in insurance law had taken place or alternatively, a completely new set of laws, an example of which is in Australia (The Insurance Contracts Act 1984).

A Questionnaire identifying some of the topics under discussion was distributed to the Delegates at the Conference and is produced in this edition of the Journal (page 29). The BILA Committee would be pleased to hear comments from other members on any of the matters raised and letters should be addressed to the Editor.

Following the presentations which are reproduced herein in part or in whole, Mr James Robinson of the Law Commission who, as a lawyer, is working full time as part of the Common Law Team, described the history, status and organisation working methods and current projects of the Law Commission. Mr Robinson reported that the outcome of their work resulted in two-thirds implementation in

whole or in part, but in the end the Government had to be convinced of the need for reform.

Mr David Taylor, the Marine Sub-Group Chairman, being unable to be present, his place was taken by Mr Tim Taylor, a member of his Sub-Group. It is interesting that, particularly in the area of Marine Insurance, the opinion seems to be that any problems can be dealt with by modifications to wordings subject to the underwriter's agreement. My own feelings are that the problems in the Non-Marine Market are more complex, particularly in the Claims area as identified by Richard Hanson-James, and may require changes in the law. Whilst the practice, which is becoming more common, of insurers agreeing, for example, to limit the duty of disclosure, save where fraudulent misrepresentation or non-disclosure is involved by the use of a properly drafted clause, as confirmed by the Court of Appeal in *HIH v. Chase Manhattan* (July 2001), is commendable, this may be considered as only partly solving the basic problem of areas of unfair law. With the market contracting and currently less profitable, it may be that wordings more favourable to the insured will be difficult to be agreed with underwriters. Alternatively, this might change if rates rise, as they appear to be doing (particularly after the events of 11.9.01) and insurers become more profitable, resulting in a more relaxed attitude to wider wordings.

This part of the BILA Conference was a useful forum giving an opportunity for Members to express their views which they did in the Question and Answer Session which followed the presentation of the papers, also chaired by Gordon Cornish.

Derrick Cole

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