

Possible Reforms to Insurance Contract Law :

(4) Summary of The Provisional Conclusions of the BILA Sub-Group On Insurance Contract Law Relating to Intermediaries

Intermediaries operate primarily on law based on decided cases other than, for example, in Australia, under their Insurance (Agents and Brokers) Act 1984. Even the new GISC Codes have no legal backing although this may change with future EC Directives. Actions against intermediaries can be brought under breach of contract or tort and there is considerable case law on the subject. If a separate Act is not considered desirable much will depend on the success of the GISC Codes which should be strictly enforced.

Our conclusions are as follows:

- 1 Voluntary Regulation was acceptable providing all insurers would agree eventually not to deal with non-GISC Members and subject to any future EC Directive which may well make registration with a Regulatory Body (such as GISC) compulsory. Alterations and/or conditions to the code should be updated on a regular basis to reflect current trading practices and the following are suggested:
 - (a) When the insurer(s) are identified under paragraph 26 of the GISC Commercial Code, all non-admitted insurers must be clearly identified and warnings given to the client of the problems associated with using an insurer who has not been approved by the Treasury.
 - (b) Whilst an intermediary is entitled to take account of the knowledge of the client concerning insurance (paragraph 6 of the GISC Commercial Code), this knowledge should not be automatically assumed but based on past experience of the intermediary's dealings with the client or by specific agreement with the client concerning his responsibilities.
 - (c) When identifying the intermediary's relationship with his client under paragraph 4 of the Commercial Code, the client must be informed as to whether the intermediary is acting as a producing or placing intermediary or both.
- 2 Although a matter covered under 'Utmost Good Faith', insurers should be required by law to ask reasonable questions (which happens in normal practice such as what is the loss experience?) concerning each risk presented to them with technical information concerning the risk being the

responsibility of the intermediaries as part of their duty to make a 'fair presentation of the risk'.

- 3 The Courts should take due account of breaches of the GISC Code when considering questions of negligence by an intermediary who is a GISC member.
- 4 Where an intermediary is acting under a Binding Authority, the intermediary, in respect of all matters relating to the contract or a claim shall be deemed to be the agent of the insurer and not the insured for all purposes. (As required by the Insurance (Agents and Brokers) Act 1984 (Australia) Section 15.) This should be made clear to the client for whom the intermediary is acting.
- 5 An intermediary should have an absolute right to withhold payment of a loss until premiums owing to him have been paid and where the debt is still outstanding under the terms of credit granted to the client.

Derrick Cole

September 2001

derrickgordon@cole72.fsnetco.uk