## INSURANCE INTERMEDIARIES

We respond to the invitation contained in Command 6715 "Insurance Intermediaries" at Para. 21 and in so responding wish to emphasise that the views set out below are those of ourselves alone and do not pretend in any way to represent the corporate view of the British Insurance Law Association which invited us thus personally to respond.

As regards Paragraphs 3 to 6 we applaud yourdecision to adopt the EEC definitions for the purpose of the paper. Any new legislation which does not conform to EEC principles will only confirm those who doubt our strength of purpose. We share the view that insurance agents' training is inadequate and are not aware of the extent of any such systematic - as opposed to spasmodic - training. The possibility of high-pressure selling by either employees of companies or brokers as well as agents can never be ruled out and we hope that the 'cooling off' regulations now under your consideration will prove effective.

We agree with the conclusion reached in Paragraph 9.

Paragraphs 14-17 need further consideration before any legislation is introduced. /These paragraphs are reproduced at the end of this article for readers' assistance/. Para. 14 proposes to make the company employing agents) fully responsible for an agent's conduct in carrying out the terms of his agency contract with the company, with a corollary that insurance should not be sold by agents except within the terms of an agency agreement, and a suggestion of some standardisation of the terms on which insurers employ agents.

Paragraph 15 speaks of making insurance agents at all times the responsibility of the (insurance) company for which they act.

Paragraph 16 endorses a recommendation of the Law Reform Committee in 1957 that 'any person who solicits or negotiates a contract of insurance should be deemed, for the purposes of the formation of the contract, to be the agent of the insurers, and that the knowledge of such person should be deemed to be the knowledge of the insurers'. At the same time, it is said, the Government does not intend that the proposer should be relieved of responsibility for the accuracy of statements made by him in response to questions expressly put to him in the proposal form.

The reality is that in many insurance transactions the intermediary is predominantly the agent of the proposer, for example:-

1. The 'own-case' agent such as the secretary of a company, on whose insurances he receives a commission which he pays over to his company;

2. The independent financial adviser, such as an accountant or a solicitor, who, in the course of implementing a plan for his client effects an insurance on his behalf;

3. The insurance consultant who, without styling himself a broker, carries out the functions of a broker.

These types of agent are distinguishable from persons who solicit or negotiate business wholly or mainly for a particular insurance company by whom their remuneration is paid either as salary or as commission. Other agents are in the position of retailers who sell insurance as an incidental to their main business, for example, travel agents and motor dealers. The degree to which an insurance company is responsible for an agent's conduct should, it is submitted, vary by category.

In many transactions the agent for one party may in the course of the proceedings find himself acting as the agent of the other party for some purposes. It is unrealistic to talk of making insurance agents at all times the responsibility of the insurance company for which they act.

The proposal for amendment of the law in paragraph 16 may be appropriate where the agent is an employee or quasi-employee of the insurance company who is dealing with an individual as a proposer. It is less easy to justify where the agent is in reality acting for the proposer with whose interests he identifies himself.

Many of the difficulties embodied in the present law of the matter (which is, with a few exceptions such as the relevant provisions of the Marine Insurance Acts, almost entirely common law derived from cases extending back over two hundred years) would be removed if the expression 'agent' were used less loosely in its insurance context. In popular parlance, and especially in the media, any insurance clerk, official or executive is referred to as an 'insurance agent'. In fact the contractual bonds which tie him and the insurer are those of master and servant. True, he is also an agent since a body corporate can only act through its employees but less strain would be put on the system by making insurance companies reponsible for all legal

acts committed by their employees when acting within the course of their employment. If the principles of the law of master and servant had been applied to a case such as Stone v Reliance Mutual Insurance Society Limited (1972) I.L.L.R. 469 the Court could have been in no difficulty in concluding that the 'agents' were in fact employees and that assistance with a proposal form was in the circumstances one of the principal tasks which they daily performed.

Subject to the foregoing we subscribe to the statements at Para. 519 of MacGillivray and Parkington on Insurance Law 6th edition and, with some reservations, to those at pp 142/3 ibid. at the foot of p 21 onwards in Boustead on Agency 14th edition save that a possible conflict of interest is always arising in the formation and subsistence of contracts of insurance and the industry must be allowed latitude for self-government in such matters.

Extract from Command 6715

## AGENTS

Alternative remedies

14. The Government believes that consumer protection in the field of insurance selling can only be improved significantly if high standards are enforced on insurance agents as well as insurance brokers. The possibility of Government action to lay down standards for agents has been considered, but rejected in view of the wide variety of agents retained by companies (the British Insurance Association has identified five major classes of agent and several minor classes) and the high cost in terms of manpower and money of an effective system of central control. The Government believes therefore that the right way to improve the standards of insurance agents is to make the companies employing them fully responsible for an agent's conduct in carrying out the terms of his agency agreement with the company. This carries with it the corollary, however, that insurance should not be sold by agents except within the terms of such an agency agreement. It will be necessary also to consider whether some standardisation of the terms on which insurers employ agents is necessary so that the public can be surer of where they stand in dealing with insurance agents.

15. The Government believes that to make insurance agents at all times the responsibility of the company for which they act would have several advantages for the consumer without laying any unreasonable burden on the insurer. These advantages include the following:-

(i) insurers and other using agents to sell insurance would need to consider in the

light of their legal responsibility whether they should raise their standards of selectivity and training for their sales forces;

(ii) policyholders would be surer of their rights under insurance policies and, unless an agent had acted outside the terms of his appointment they would be able to get redress more easily for his failings by proceeding directly against the responsible insurance company - a more substantial target.

The law of agency

16. To provide that insurance agents should at all times be the agents of the company for which they act, and fully responsible to that company, would also remove a legal anomaly that works to the detriment of policyholders. Whilst the insurer's agent acts for the most part as agent of the insurer, the balance of legal opinion is that in filling out a proposal form on behalf of an insured, he is the agent of the insured. This doctrine can have serious consequences for the insured: if the proposal form is later found to have mis-stated or omitted a material fact, even if this could be held to be the fault of the agent and not of the insured, the insured may find himself without cover. The Law Reform Committee, in its Fifth Report of January 1957, addressed itself to this problem and recommended that any person who solicits or negotiates a contract of insurance should be deemed, for the purposes of the formation of the contract, to be the agent of the insurers, and that the knowledge of such person should be deemed to be the knowledge of the insurers. The Government's suggestion in paragraph 14 above for making insurers fully responsible for the conduct of their agents provides a useful opportunity for giving effect to this recommendation. But it is not the Government's intention that the proposer should be relieved of responsibility for the accuracy of statements made by him in response to questions expressly put to him in the proposal form.

17. In deciding on any change in the legal position of insurance agents the Government will of course need to consider its implications for insurance brokers, in view of their similar function as intermediaries.

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