"A STATEMENT OF COMPANY POLICY"
by Derek Cole

The recent market problems which have resulted in many leading insurers declaring a "negative profit" have had numerous knock-on effects. Staff levels have had to be reviewed, branch offices closed and a close watch has had to be made on credit matters particularly cash flow. Recently I was involved in a claim against a leading British insurer which took six months to settle. There was no dispute over the cover, nor the amount claimed (some few hundred pounds), nor the circumstances of the loss. One is tempted to ask whether this was part of a deliberate policy to assist the cash flow problems of the insurers. Claims negotiator Jeffrey Salmon of loss assessors Salmon Adams Hilton was reported in the Daily Telegraph as saying: "The insurers are doing everything they can to knock back claims and it is taking much longer to settle them than it used to". At the same time, provincial brokers tell me that credit controllers of insurers are hyper-active over the settlement of accounts and fail to understand the difficulties brokers are experiencing collecting premiums. As one broker put it to one company credit controller: "Do you want your lapse ratio to suddenly increase, because that is what will happen if you pursue your current policy of account settlements?"

No-one doubts the seriousness of insurers' current losses where there is unlikely to be a return to profitability until 1993 as Ian Rushton, Chairman of the Association of British Insurers, was reported to have told those assembled at the recent ABI biennal dinner. He highlighted that the key to profitability must be prudent underwriting and this was gradually returning. ABI members which account for 90% of British based world-wide insurance, reported non-life fire and accident losses last year of £3.3 billion compared with £1.9 billion the year before.

With all the problems of the Market, is it not time that insurers stated in writing the principles which are important to their business? Members of this Association will recall that only in recent times, some insurers were accused of being financial institutions and insurance was only an excuse for them being in business as such. Some were in fact making more money from their investments than from their underwriting.

No person engaged in the business of insurance or in fact in the legal world specialising in the subject, would wish to see the market contract, especially Lloyds where underwriters have been the prime innovators of new forms of cover. One only has to recall the issue of the first aviation policy, Cuthbert Heath's first theft policy when he was asked by a broker to insure household contents against theft and is

recorded to have said "why not?". The insurance of hovercraft under the first air cushion vehicle policy and in recent times the cover for satellites are but two further examples but there are many more. Any action causing loss of capacity in the Lloyds and Company Market would be for the broking and legal world to "bite the hand that feeds it". The market must remain profitable but its priorities must be clearly defined and any lowering of standards or performance could easily result in loss of credibility which would be a disaster for our world wide reputation.

The sceptics amongst our members may well feel that the following statement is too general. To those I would say the statement is necessary as staff need at all times to relate to it as a reminder of the aims and objects of the company or syndicate. Every Risk Management Programme with which I have been associated always started with a "Statement of Intent" so that all those involved knew the targets of the exercise and every specific action had to relate to those stated principles.

If number two of the following had been clearly stated and implemented by the insurer who held up the claim mentioned earlier, perhaps the delay could have been avoided.

Specimen Insurance Company Statement or Charter

1) It is our intention to provide the widest possible cover within our general underwriting policy, commensurate with reasonable premiums, bearing in mind the risks involved and the reinsurance available to us.

2) We shall endeavour to settle all legitimate claims for losses falling under policies underwritten by us without undue delay and we shall not operate a policy of aggressive claims settling procedures. However, where fraud occurs, we shall prosecute the offender with the utmost vigour.

3) We support the principle of alternate dispute resolution including the Insurance Ombudsman Bureau in an endeavour to avoid expensive litigation costs and to limit delays in claim settlements.

4) We shall endeavour to employ staff of high calibre and qualifications relevant to their position in the Company and to remunerate them at a level commensurate with their status.

5) We shall endeavour to maintain the cost of the Company's overheads at a level lower than our competitors, but not lower than is necessary to maintain or

improve our market share and to provide our customers with the best possible service.

6) It is our intention to provide our shareholders with a fair return on their investment but not at the expense of our obligations to our policyholders.

THE BILA /CII DEBATE

THE DEVELOPMENT AND RATIONALE OF UTMOST GOOD FAITH IN INSURANCE LAW

by Ray Hodgin, Birmingham University

Let me start with two quotations of respectable antiquity; the first from the 1380s.

> "For when they insure it is sweet to them to take the monies; but when disaster comes it is otherwise and each man draws his rump back and strives not to pay".

The second quotation is taken from the Introduction to the 1790 edition of Park's Law of Marine Insurance,

> "It will be the business of the following work . . . to point out . . . and to prove, that the learned judges . . . by adopting the true principles of commerce in their decision of the many intricate cases, which have been brought before them have added another pillar to that beautiful structure of rational jurisprudence, which has deservedly acquired the admiration of mankind."

The purpose of the present paper is to trace the development of the doctrine of utmost good faith in the making of insurance contracts and to see whether the pessimism of 1380 or the optimism of 1790 has prevailed.

The decision by Lord Mansfield in *Carter v Boehm* in 1766 is generally credited by both judges and writer as being the foundation case for the establishment of the rules of utmost good faith in the making of insurance contracts. However, before dealing with that judgment it should be said that more than 60 cases on marine insurance had been reported, the first being in 1545, between the time of Elizabeth I and Lord Mansfield's 1766 decision but that no case had attempted to lay down any great principles of insurance law.