

***Ackman & Scher -v- The Policyholders' Protection Board***  
**by Jonathan Sacher, Paisner & Co.**

The question of what is a U.K. policyholder for the purposes of the Policyholders Protection Act (PPA), has come before the House of Lords as a result of the collapse of the KELM companies.

The first instance decision was to the effect that to benefit from the fund created by the PPA a policyholder may not be someone based abroad. The Court of Appeal decided that a policy is a United Kingdom insurance policy when the insurer authorised to carry on insurance business in the United Kingdom, performed, as one of his obligations, the payment of claims, whether to insureds in the United Kingdom or abroad i.e. a policyholder will obtain the benefit of the fund even if he is based abroad provided the insurance was effected with a U.K. authorised company.

The House of Lords has now decided finally, but only as a Declaration by way of interpretation of the PPA, that an insurance policy is a United Kingdom policy if any of the obligations performed under the policy are part of the insurance business which the insurer was authorised to carry on in the United Kingdom. It therefore makes no difference whether the obligation (e.g. payments of claims) was to be performed in the United Kingdom or not i.e. it supported the court of Appeal's view.

Therefore, Mr. Ackman, and his partners, who are lawyers in the law firm of Fried Frank in New York, and Mr. Scher and his colleagues who are physicians in private practice in the United States who were insured under the Weavers slip, will be reimbursed by the PPA fund if the KELM companies are finally liquidated.

This interpretation of the PPA may result in a substantial levy on the London Market, for payment of these claims of overseas based insureds. This is however not surprising bearing in mind that as those insureds chose to insure in London, they will argue that they therefore ought to be entitled to the protection of the London Market's established "guarantee fund".