

# CLAIMS AGAINST INSURANCE BROKERS

## Causation & Loss

Ben Elkington QC

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# The importance of causation

- Low standards of care by brokers
- Hardened attitude of insurers
- Vulnerability of insured after a loss
- Broker's duty to protect insured against "the unnecessary risk of litigation."

# Causation

- (1) Defences based on the Claimant's conduct
  - Factual causation
  - Breaks in the chain of causation
- (2) Failure to sue the insurer
- (3) Under-settlement with the insurer
- (4) The insurer's hypothetical conduct

## Where the insured event would not have occurred

Example: Failure to advise of condition precedent requiring all heaters to be removed

Insured failed to remove the heaters

Fire caused by a heater

£10m damage caused by the fire, but only £5m sum insured: recovery of £10m, £5m or £0?

The broker's causation defence

The proper measure of damages

*Jones v Environcom Ltd*

# Where no insurance cover would have been available

Difficulty of proof

The insured's response

Foreseeability

# Recoverability of damages for consequential losses

- *Ramwade v W J Emson & Co Ltd*
  - Impecuniosity
  - “No damages for the non-payment of damages”

# Subsequent developments

*SAAMCo* scope of duty analysis

*Aneco Reinsurance v Johnson & Higgins*

*Arbory Group v West Craven*

Broker's liability c/f insurer's liability



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