CLAIMS AGAINST INSURANCE BROKERS

Causation & Loss

Ben Elkington QC
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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