DELEGATED AUTHORITIES – AGENCIES, AUTHORITIES & LIABILITIES – A UK PERSPECTIVE

Tim Goodger
Topics

A. General Observations
B. Legal Principles
C. Role of the placing broker
D. The Managing Agent
E. Disclosure
F. The Contract and Specific issues
A. General Observation

• Delegation of underwriting, claim handling, collection of premium

• Broker or underwriting agency

• Advantages - distribution channels
  - cost effective in new business types

• Renewed interest: 1/3 of Lloyd’s business
£8bn of premium income
A. General Observations (2)

- Binder = a commercial agreement
- Not a contract of insurance
- No industry standard
- Binders and other agreements must compliment/be consistent
- Awareness of duties
A. General Observations (3)

• Full authority

• Pre-determined risk selection and rates

• Prior submit
B. Legal principles – duties/obligations

1) Contractual obligations
2) Common law / agency
3) Lloyd’s
4) FCA and/or PRA
Legal principles – duties/obligations (2)

On the coverholder

• Contract
  - Express
  - Implied
• Tortious (concurrent liability with contract)
• Fiduciary (as agent)

On the underwriter

• Contract
  - Express
  - Implied
Legal principles – duties/obligations (3)

Contractual obligations

• Coverholder -------- > -------------- Insurer

• Broker (placing the binder) -------- > -------------- Coverholder

Accounting for premium

• Coverholder -------- > Broker > -------------- Insurer
Legal principles – duties/obligations (4)

Contractual terms

Binders generally include:

• Binding Authority limits
• Payment of premium and accounting
• Payment of commission
• Claims handling/payment of claims
Legal principles – duties/obligations (5)

Contractual terms

• Auditing/performance review/inspecting records
• Termination of binder
• Jurisdiction and law

Beware:
• Changing practices over time
Legal principles – duties/obligations (6)

Common law / agency

• Obligations on the cover holder
  - Implied duty to act with reasonable skill and care
  - Fiduciary duties

“A fiduciary is someone who has undertaken to act for or on behalf of another in a particular matter in circumstances which give rise to a relationship of trust and confidence. The distinguishing obligation of a fiduciary is the obligation of loyalty. The principal is entitled to the single-minded loyalty of his fiduciary…”

*Bristol & West Building Society V Mothew (1998)*
Legal principles – duties/obligations (7)

Common law / agency

In practice this means:
• Always acting in the best interests of the principal
• Not to make secret profits
• To act in good faith
• Not to have conflicts of interest
• To act within the terms of the authority given
• A duty to disclose and report material information to the principal

Note:
• Applies to individuals as well as companies
Legal principles – duties/obligations (8)

Authority

• Actual authority
• Ostensible authority
• Delegation of authority
  - Dilution of authority/limits of authority
• Ratification
Legal principles – duties/obligations (9)

Lloyd’s

• Intermediaries Byelaw

• Lloyd’s Code of Practice – Delegated Underwriting

FCA

- Authorisation of coverholder and insurer

- See - *CIC Insurance Company Costa Rica*
C. The Placing Broker

• Not a party to the contract

• Participates in operation of the binder
  • Premium remittances; communications

• Generally – no duty owed to the insurer
The Placing Broker (2)

• Sub-agent of the insurer when binder effected

• A duty may be assumed
  - *Pryke v Gibbs Hartley Cooper (1991)*
D. The Managing Agent

- Authority from syndicate members to enter binders
- Duty of care to members in contract and tort
- Lead underwriters/
  - Lloyd’s Claims Schemes
  - arbitration process
  - Limitation of Liability £2m per claim (£10m per year)
  - no liability for consequential losses
E. Disclosure

Disclosure

*MIA 1906 ss17-19*

Misrepresentation

*Misrepresentation Act 1967*
Disclosure (2)

• Personal liability
    - Fraudulent misrepresentation
    - Concealment

• Fraud unravels all
  * Markel/QBE v Surety Guarantee Consultants (2009)
F. The Contract and Specific issues

Negotiation and terms

- Consistency between slip contract and binder
- Consistency between documents
- Supplement duties/obligations with express provision
The Contract and Specific issues (2)

Claims

• Potential loss of control
• Binder and Claims Handling Agreement
• Claims settlement within delegated authority?
• Detailed framework and reporting structure
• Differentiate between underwriters
Terminating the Binder

• Breaches of authority - actionable breach
• Plan for termination
• Properly drafted notice
• Timing of notices
The Contract and Specific issues (4)

Terminating the Binder

- Delivery up of insurance documents
- Handling the run-off

- *Temple Legal Protection Ltd v QBE Insurance (Europe) Ltd* (2008)

The Contract and Specific issues (5)

- **Ownership**

- **Exclusivity**
  - Diverting business
  - Insurer has right of first refusal

- **Proprietary Rights**
  - Insurance Documentation
  - Marketing Material

- **Non Solicit**
To Conclude..

- Potential increasing exposure for professional indemnity market
- Coverholder
- Broker
- Managing agents - Consortia
  - Lloyd’s Claims scheme
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