

AIDA Europe Conference Amsterdam

Minutes of the jointly meeting of the Working Parties Distribution of Insurance Products and Marine Insurance, 26th May 2011, 15.15 p.m.

Participants:

Prof. Dr. Robert Koch, Chairman, University of Hamburg, Germany
Prof. Dr. Ioannis Rokas, Chairman, Athens University of Economics & Business, IKRP, Greece
Dr. Kyriaki Noussia, Secretary, IKRP, Greece
Dr. Dieter Schwampe, Secretary, Dabelstein & Passehl, Germany

Marija Músec, CMS Zagreb, Croatia
Philipp Graff, MAQS Law Firm, Denmark
Dr. Gunne Bähr, DLA Piper, Germany
Stefan Speyer, Allianz SE, Germany
Svenja Richartz, VDVM e.V., Germany
Antonis Lagadianos, Ince & Co, Greece
Stella Sakellaridou, University of Athens, Greece
Alkistis Christofilou, IKRP, Greece
Mauro Caretta, DLA Piper, Italy
Mario Riccomagno, Italy
Prof. Dr. Pierpaolo Marano, Università Cattolica Milan, Italy
Jacco van de Meent, Van Traa Advocaten, Netherlands
Ruud Gerrits, Amlin Corp. Insurance, Netherlands
Otto Klaassen, Norton Rose, Netherlands
Harko Kremers, Verenigde Assurantiebedryven Nederland N.V., Netherlands
Prof. Eliseo Sierra, Universidad Autónoma de Barcelona, Spain
David Diez Ramos, Rogers & Co, Spain
José M. Munoz, University of Oviedo Garrigues, Spain
Ulrike Mönnich, GBF Legal, Switzerland
Christian Benz, Benz Attorneys Ltd., Switzerland
Prof. Dr. Alexander von Ziegler, Schellenberg Wittmer, Switzerland
Isabella Merlin, Clyde & Co, UK
Peter Rogan, Ince & Co, UK

I. Welcome to the Members of the Joint Working Party “Distribution of Insurance Products” & “Marine Insurance and greeting to the hosts and attendees as well as an outline of the Joint WP Session to follow.

Prof. Dr. Rokas and Prof. Dr. Robert Koch in their capacity as the Chairmen of the Distribution of Insurance Products and Marine Insurance Working Parties respectively welcomed the members of the Working Parties and the other attendants of the meeting, spoke briefly about the idea of the joint meeting of the working parties and the general background of the topic and then summarized the issues of the agenda for the current meeting re the discussion on Marine Insurance Brokerage. Further on they introduced the speakers.

II. Reports and Discussions

After the four presentations were held, a broad discussion after each one of them followed:

1. Report

Dr. Dieter Schwampe: "Incoherent cover periods in co-insurance & Problems for Leader and Co-Insurers"

Dr. Dieter Schwampe talked on the categories of lead clauses and their legal status (under German Law and other) as well as on the position of Leader and insurers in both the case where there is a valid leader clause and in the case where there is not a valid leader clause. He went on and drew some conclusions (as to the validity of leader clauses in co-insurance)

Discussion

The discussion conducted focused on the issue of the validity of lead clauses

2. Report

Dr. Isabella Merlin: "Liability of Insurance Brokers for Premium" Dr Merlin elaborated on the position re the liability for insurance brokers for the premium before and after the enactment of the MIA 1906. She set the market practice outside s. 53 (1) MIA 1906 and the broker/ assured's positions and the aim of the Joint Scoping Paper 2006 of the Scottish and English law Commissions. She finally commented on the broker's protection in the event of assured's default.

Discussion

Dr. Schwampe asked on the current case law trend and Dr. Merlin replied stating that recent case law has disapproved reliance on the common law fiction

3. Report

Dr. Mario Riccomagno: "Marine Insurance Broker and Chartering Broker: two recent cases before Italian courts".

Dr. Riccomagno presented two recent Italian cases and in doing so he elaborated on the liability of the marine insurance broker and on the liability of the chartering broker (s opposed to the liability of the general broker). He also analysed the position under Italian law regarding the legal qualifications and functions of the insurance broker. In particular, he stressed the extent of the authority of the marine insurance broker, as opposed to the position followed until now by the Court of Appeal (*Corte di Cassazione*) and by the law (art. 1745 of the Italian Civil Code). He also gave the judicial interpretation of the extent of the authority of the chartering insurance broker and also made the contrast with the authority of the general insurance broker.

Discussion

An English member of the audience asked whether the legal status as per the liability of the chartering broker gets him "off the hook". Dr. Riccomagno replied that his liability is limited but existent.

4. Report

Dr. Kyriaki Noussia (presenting the paper of Dr. George Theocharidis: "Marine Insurance Broker's Liability – Quantum of Damages"). Dr. Noussia presented the paper of Dr. Theocharidis as the latter was not able to be present at the session. She analysed the duties of the marine insurance broker *ex contractu* & *ex lege*, i.e. in tort law (negligence), in agency law (fiduciary duties), the general duty of professional care, the general duty to disclose information and to abstain from any misrepresentations. In doing the analysis for the contractual and tortious liability she also gave the rules for the amounts to be recovered via the presentation of some English case law as well.

Discussion

Dr. Schwampe asked for the justification of the ruling of the English court in *Youell v. Bland Welch & Co Ltd (The Superhulls Cover) (No2) [1990] 2 Lloyd's Rep. 431* where it was held that in case of breach of duty by intermediary/broker to obtain reinsurance, when reinsurance would not be available in the market, the measure of damages would be the difference between the loss incurred on the primary cover and the amount which would be recovered, if the reinsurance would have been in place. Dr. Noussia replied that this seemed fair because in the opposite case the award of a larger sum would be unfair given that the reinsurance

was never in place. Prof. Dr. Wandt queried on the attitude of Greek courts. Dr. Noussia replied that a Greek judge would be reluctant to adjudicate large sums and thus that an award similar to the English one would be probably concurred. Prof. Dr. Rokas also commented stating that factors such as contributory negligence and causative nexus would be estimated by the Greek/ continental judge. He also stated that such a judicial trend is similar to the German principle of "Erfuellungshaltung".

All presentations shall be published on the website of the Marine Insurance Working Party shortly.

III. Closing Remarks

Prof. Dr. Ioannis Rokas and Prof. Dr. Robert Koch thanked the audience.

Distribution of Insurance Product Working Party

Prof. Rokas announced the next meeting of the WP to be held in Tel Aviv in Israel in Sept. 2011 on the topic of reinsurance intermediation. He also stated that further info and details were to follow.

Marine Insurance Working Party

Subsequent to the presentations and the discussions of the joint meeting the Marine Insurance Working Party held a separate meeting, at 5.45. p.m.

It was discussed and decided that the Marine Insurance Working Party will only meet once per year in connection with a conference (e.g. AIDA Europe, AIDA World Congress; AIDA-CILA). The next meeting will be in London, Autumn 2012.

The topic for the next meeting in London will be decided at the beginning of 2012. It was suggested to deal with liability regimes and insurance coverage for carriers and shippers. Robert Koch reported about plans of the Executive Committee to advise and support the working party activities.

Minutes prepared by

Svenja Richartz (Marine Insurance Working Party), Hamburg, 30th May 2011

&

Dr. Kyriaki Noussia (Distribution of Insurance Product Working Party), Athens 30th May 2011