



Press Release – Embargoed until 00:01 on 19 July 2010

The broker's liability for premiums: out of step with modern commercial practice?

An insurance broker is personally liable for paying premiums to an insurer, whether or not the broker has received payment from the policyholder. The law on this issue is set out in a particularly complex provision: section 53 of the Marine Insurance Act 1906.

In a paper published today, the Law Commissions of England and Wales and of Scotland seek views on whether section 53 is still needed. They consider reforms to bring the broker's liability into line with general law and to allow greater flexibility in contractual arrangements.

Section 53(1) was based on a custom designed to protect insurers from the risk of dealing with policyholders they did not know. However, it runs contrary to the normal rule of agency law – that an agent is not personally liable on a contract effected on someone else's behalf. It also appears to apply only to marine insurance.

David Hertzell, the Law Commissioner leading the project for England and Wales, said,

“The courts' efforts to grapple with the complexities of section 53 have generated many inconsistent decisions – so it is difficult to be sure what the section means. It appears to place the broker at risk if the policyholder becomes insolvent. But it may also pose risks to insurers if a broker becomes insolvent. It is possible that the section would prevent an insurer from recovering the premium from the policyholder, but that the insurer would still be liable to pay claims. Section 53 may be out of step with modern commercial practice.”

Professor Hector MacQueen, Scottish Law Commissioner, said,

“It is the policyholder who benefits from having insurance, so why should the policyholder not be liable for the premiums? This paper sets out our preliminary thinking on section 53 and asks whether there is a case for reform and, if so, what the solutions might be.”

The Commissions seek responses **by 19 October 2010**. The paper, “The Broker's Liability for Premiums: Should Section 53 Be Reformed?”, includes a full list of questions, and can be found on the Law Commissions' websites at:

http://www.lawcom.gov.uk/insurance_contract.htm and
<http://www.scotlawcom.gov.uk/html/cpinsurance.php>

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Notes for Editors

1. The Law Commission and the Scottish Law Commission are non-political independent bodies, set up by Parliament in 1965 to keep all the law of England and Wales and of Scotland under review, and to recommend reform where it is needed.
2. This paper is released as part of the Law Commissions' joint review of insurance contract law. More details can be found at:
http://www.lawcom.gov.uk/insurance_contract.htm, and
<http://www.scotlawcom.gov.uk/html/cpinsurance.php>
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