

## Using Experts in Insurance Disputes

The world of insurance is based on payment of claims. Most litigation is therefore between two parties to an insurance contract; however, litigation occurs not only between policyholder and insurer, but also between a policyholder as a client and an insurance broker as their agent (policyholders may also claim against both their broker and their insurer). Insurers also sue reinsurers and vice versa, with reinsurance brokers often party to such disputes.

Private consumers' claims are often rejected ("avoided") by their insurer on the grounds of non-disclosure. Changes in consumer insurance law now put the onus on the insurer to prove the relevance of alleged non-disclosure. This is a very recent development, so contracts entered into before 2013 are still subject to dispute on the grounds of non-disclosure.

GBRW Expert Witness decided in 2009 to enter the insurance expert field by acquiring the business of Associated Insurance Experts, a group of about forty experts in many insurance disciplines who had been pooling their knowledge and contacts for nearly 20 years.

### Expertise and experience

The majority of cases referred to us concern broker negligence (roughly one third of instructions) or underwriting decisions and practice (another one third).

Market sectors range from motor to marine insurance, from liability to livestock insurance and from property insurance to placing agencies ("binding authorities"). Private insurance policy disputes feature, as do professional indemnity problems and esoteric areas such as contingency insurances – prize indemnity, defective title and restrictive covenant. We have dealt with life assurances, investments, mortgages and pension provision as well as health and medical insurances and also have access to loss adjusting and forensic claims experts, who can assist with quantum issues.

Our experts have been actively involved in the Law Commission reform of insurance contract law. The Consumer Insurance Act 2012, the first Statute for private customers, was enacted in April 2013 and a follow-up Bill for business customers is in preparation.

### Timing of appointments

Many solicitors looking for an expert may only be involved in insurance cases from time to time. We can assist the requirement for expert evidence by proposing experts who have relevant and appropriate expertise, based on our knowledge of their track record as experts and their industry background. In the case of more straightforward disputes, we can also discuss a fixed fee approach for an initial overview of key issues.

Given the particular characteristics of the insurance market, an early approach to an expert is highly advisable and can often be very persuasive in the progress of a case.

If an expert is approached too late in a case (when the parties have already taken positions), assumptions about insurance contracts by the legal team may prove to be ill founded or incorrect. Insurance jargon and the wording of contracts occupy a particular world; a basic error in interpreting the effect of an insurance policy can badly weaken the client's position in a disputed claim.

## Examples of disputes

- A private individual had a motor insurance claim repudiated for not disclosing a driver who had their permission to drive and who wrote off the insured car. Expert evidence showed that there was no obligation to continually disclose drivers to the insurer when their Certificate of Insurance covered “any driver.”
- In the commercial forum, a large number of disputes concern alleged negligence or lack of professionalism of the intermediary (insurance broker) or independent financial adviser. Brokers may fail to point out changes in policy terms, for example where an intruder alarm warranty on a warehouse insurance applied not only to theft but also to all other losses.
- The suitability and cost of insurance can be challenged by groups of insureds. For example, tenants and leaseholders of blocks of properties acquired by a private company claimed that the previous owner, a local authority, overcharged insurance to tenants for at least 10 years.
- Insurance experts are called to comment on insurance market practice. Insurers may feel that a breakdown in communication or a breach of authority has exposed them to losses they would not have insured. If there was misrepresentation, which party was responsible and must the insurer still pay?
- Disputes also arise with insurance brokers over the charging of supplementary fees or “add-on” insurances. Experts are called to advise on custom and practice in broker remuneration.
- A major insurer had to admit liability on a fire loss claim it had avoided after the Insurance Ombudsman reversed its previous decision. The expert applied basic insurance underwriting principles, gathered over a lifetime of experience, and showed the insurer had failed to follow its own procedures. This was a high profile case of an insurer trying, as many do, to underwrite a risk once a claim was presented.

## For further information

If you would like to discuss a requirement for expert evidence, please contact:

GBRW Expert Witness Limited  
27 Throgmorton Street  
London EC2N 2AQ

T: +44 20 7382 9900  
F: +44 20 7382 9988  
E: [experts@gbrowexpertwitness.com](mailto:experts@gbrowexpertwitness.com)  
W: <http://www.gbrwexpertwitness.com>

GBRW Expert Witness also has an office in Singapore and Martin Edwards, our Director Asia, can be contacted on [martin.edwards@gbrowexpertwitness.com](mailto:martin.edwards@gbrowexpertwitness.com) or +65 9623 1657.