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IUA Market Briefing 24 January 2017

Leaders, Followers & Agreement Parties

Andrew Schütte, Partner

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Subscription Agreement

Slip Leader

Basis of Agreement to Contract Changes (GUA)

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The General Underwriters Agreement

Part 1 – Alterations the Slip Leader may agree on behalf of all Underwriters, e.g.

- Restrictions in coverage
- Alterations which decrease monetary exposure
- Agreement of policy wording(s) in accordance with express provisions in the slip

Part 2 – Alterations the Slip Leader and Agreement Parties may, if unanimous, agree on behalf of all Underwriters

Part 3 – Alterations which may be agreed only by all Underwriters, e.g.

- Policy period extensions of over a month
- Extensions to geographical scope of the contract
- All Alterations the Slip Leader or any Agreement Party believes ought to be agreed by all Underwriters

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Subscription Agreement

Slip Leader

Basis of Agreement to Contract Changes (GUA)

http://www.marketreform.co.uk/index.php/current-resources/placing_documentation/gua

Other Agreement Parties for Contract Changes for their own Proportion

Other Agreement Parties for Part 2 GUA Changes Only

Basis of Claims Agreement

Lloyd's Claim Scheme

IUA Claims Agreement Practices

"*The practices of any company(ies) electing to agree claims in respect of their own participation*"

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Claims Agreement Parties

i) For Lloyd's syndicates

The leading Lloyd's syndicate and, where required by the applicable Lloyd's Claims Scheme, the second Lloyd's syndicate and/or the Scheme Service Provider.

The second Lloyd's Syndicate is JKL (1234).

Security Details	%
Axa (Paris)	35%
Amlin (Lloyd's)	25%
Mapfre (Madrid)	10%
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Multiple slips

Who is on the risk?

Who is the leader?

Who are followers?

Are the slip wordings

consistent?

If not, does one slip prevail?

Multiple slips: *Gard v Glacier Re*



- Glacier Re 40%
- No express law and jurisdiction



- London reinsurers 60%
- English law and jurisdiction

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Why did English law and jurisdiction apply to Glacier Re?

"…the reinsurance by Glacier of Gard was a participation by it as part of a London market placement and not a separate placement in the Swiss market…"

Do Followers *have* to follow?

Under the subscription agreement

- If not all Claims Agreement Parties agree (*Beazley v Al Ahleia*)?

Under other terms: leading u/w clauses/claims protocols

Under the Lloyd's Claim Scheme

Where there are multiple slips

Ex gratia settlements

Tips for Followers

Get the mud map if you possibly can

Know your contractual rights e.g. for information, and use them

Be vocal and raise concerns with the lead

Leader's liability to Followers

A contract of agency?

Yes: "*The Leegas*" [1987]; *Youell v Bland Welch* [1990]; *Roadworks (1952) Ltd v Charman* [1994]; *Roar Marine v Bimeh Iran Insurance Co* [1998]; *Unum Life v Israel Phoenix Assurance* [2002]

No: *Mander v Commercial Union* [1998]; *San Evans Maritime v Aigaion* [2014]

What duties does Leader owe Followers?

Any express duties set out in the contract, e.g. in any claims protocol; in LCS; or in IUA Claims Agreement Practices (10.1.3)

Implied duties as the Followers' agent, including to:

- act in good faith
- avoid any conflict of interest with the Followers
- not make secret commissions
- carry out Followers' instructions with reasonable care and skill

Duties to Followers are owed by the Lead on both underwriting and claims

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Express Duties of the Lead under the IUA Claims Agreement Procedures (10.1.3)

Lead Responsibilities

The leader must check that the information on the CLASS entry, as completed by the broker, is complete, correct and representative of the correspondence within the claims documentation and/or the electronic claim file.

The leader must request the broker to amend the entry if the information supplied is incomplete.

The Leader should action a movement to advise following companies of the claim/reserve if the broker's entry is representative of the correspondence on the claim documentation, even though further information is required before the claim can proceed. The leader should comment in the "Lead Comment" field with public or private comments as applicable.

The leader should, if satisfied with the information on an entry, take action within 24 hours of the broker supplying the claims information.

The leader must not action an entry prior to either seeing the broker's file, or receiving the claims documentation from the broker.

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Express Duties of the Lead under the IUA Claims Agreement Procedures (10.1.3)

Lead Duties

The leader should:

Ensure that they are the proper company lead.

Ensure that the advice/settlement request provided by the broker will accurately describe the claim to other members. The leader should add indicative comments as necessary.

Ensure, on unclosed advices, that no original premium signing number has been processed. If the stage 1 (premium accounting) signing has been actioned, the leader should request the broker to process the movement including this information.

Ensure that the original bureau signing reference quoted (where applicable) relates to the correct policy (and section).

Limit to Leader's Liability?

Lloyd's Lead's liability to Lloyd's Followers

LCS 2010, para 28: Lloyd's Lead/Second Lead's liability to Lloyd's Followers is limited to:

- £2m per claim
- £10m for all claims made in a year

LCS 2010, para 32: "*limits of liability…shall not apply… as… prohibited by law*" – e.g. fraud

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How to deal with conflicts of interest as a leader

A true “conflict”?

Step aside as lead?

- LCS clause 9
- IUA Claims Agreement Procedures 10.1.8

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IUA Claims Agreement Procedures 10.1.8

10.1.8 Conflict of Interest

The situation can arise where a participating company becomes aware that a possible conflict of interest exists. This means that the company may decide to take no further part in decision making in respect of that advice/settlement.

When the leader is approached by the broker, they may become aware of a conflict of interest on the advice/settlement being presented. The leader may then ask the broker to re-submit the entry with the next participant on the slip as the new leader.

Following participants can register a conflict of interest once noting/authorisation or circulation is complete. The leader can register a conflict while the transaction is still 'awaiting action'.

Participants that have indicated a conflict will receive only the recommended reserve amounts on advice transactions, and the same information plus their financial information on settlement request transactions. All other information about the claim will be withheld from the company in conflict.

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IUA Claims Agreement Procedures 10.1.8

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Could an insured really sue for breach of Subscription Agreement?

"Contract Administrative and Advisory Sections: (the above is an optional heading)"

- An administrative convenience?

"Severable agreement" between insurers?

Breach of contract with (re)insured?

Settlement expressed not to bind the following market

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San Evans Maritime v Aigaion [2014] EWHC 163



50% London insurers

No mention of any other slip



30% Aigaion

"Agreed to follow [London insurers] in claims..."



London insurers settled Expressly NOT "in the capacity of a Leading Underwriter" and did "not bind any other insurer"

Summary

Little guidance from case law on operation of subscription agreement

Slip and wording need accurately to reflect parties' intentions

Multiple slips can create uncertainty

Follower's obligation to follow depends on the wording

Leader may be liable to followers for breach of fiduciary duty

Useful links

Market Reform Contract http://www.londonmarketgroup.co.uk/mrc

General Underwriters' Agreement
http://www.londonmarketgroup.co.uk/index.php/current-resources/placing-documentation/gua

Lloyd's Claim Scheme http://www.lloyds.com/the-market/operating-at-lloyds/claims-at-lloyds/lloyds-claims-scheme

Lloyd's Claim Scheme guidelines
http://www.lloyds.com/~/media/files/the%20market/communications/market%20bulletins/2014/12/y4846.pdf

Damages for Late Payment of Claims

http://www.hilldickinson.com/publications/insurance/2016/may/damages_for_late_payment_of_cl.aspx

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Contact

Andrew Schütte
Hill Dickinson LLP
+44(0)20 7280 9310
andrew.schutte@hilldickinson.com

