

I use the words “broker” and “agent” synonymously throughout, the old distinction no longer applying, and have tried to use “claimant” in place of “plaintiff”. I have also retained the insurance market’s traditional use of “endorsement” instead of the more purist “indorsement”.

I am immensely grateful for the invaluable assistance and comments of Julian Flaux Q.C. of 7 King’s Bench Walk, George Leggatt Q.C. of Brick Court Chambers, Oliver Gooding of Willis, Richard Outhwaite, Geraldine Wright of LMBC, Michael Taylor of Xchanging, Tim Williams, Richard Astor and my colleagues Jeremy Hill, Jeremy Thomas, James Perry, Vivienne de Chermont, David Toube, Patricia Wade, Diane Faulks and Matthew Griffith at Ashurst. I must also record my gratitude to Helen Smith and the library team at Ashurst for their assistance, cheerfulness and unfailing courtesy. As usual the principle of ministerial accountability applies and I take full responsibility for any oversight.

Final thanks are due to Sweet & Maxwell for their management of what is always a tortuous process and their accommodation of author’s foibles, his other commitments, and late amendments. As always no book can hope to be either comprehensive or prescient at the date of its publication, and the law is therefore stated as I consider it to be at August 1, 2003.

C C Henley
Broadwalk House
5 Appold Street
London EC2A 2AH

Contents

<i>Preface</i>	v
<i>Table of Cases</i>	xi
<i>Table of Statutes</i>	lvii
<i>Table of Statutory Instruments</i>	lxi
<i>Table of International Legislation</i>	lxiii
Part One—Agency	<i>para.</i>
Chapter 1: The features of an insurance broker	1-001
Other Agents	1-011
Chapter 2: Relationship between principal and broker	2-001
Formation by Express Contract	2-001
Formation by Implied Contract	2-003
The Duties of the Broker	2-004
Practical Difficulties and Possible Solutions	2-024
Brokers’ Defences to a Claim for Negligent Selection of Security	2-028
Brokers’ Fall-Back Positions	2-037
The Rights of the Broker	2-058
The Data Protection Principles	2-083
Chapter 3: Relationship between principal and third parties	3-001
Actual Authority of Broker	3-001
Ostensible Authority of Broker	3-002
Termination of Brokers’ Authority	3-004
Ratification	3-005
Assignment	3-019
Chapter 4: Relationship between agents and third parties	4-001
Rights and Liabilities Under the Contract	4-001
Damages	4-018
Part Two—The Contract of Insurance	
Chapter 5: Principals of insurance	5-001
The Relevant Principles	5-005
Misrepresentation	5-049
Facts Which Need Not Be Disclosed	5-050
Burden of Proof	5-063

Effect of Breach of Duty of Good Faith	5-064
Duration of the Duty	5-067
Open Covers, Floating Policies, Coverholders and the Duty of Utmost Good Faith	5-072
Alteration of the Risk	5-074
The Insurer's Duty of Good Faith	5-075
Possible Ways for the Broker to Avoid the Problem of Non-Disclosure	5-079
Chapter 6: Formation of the contract	6-001
The Offer	6-001
The Acceptance	6-002
The Cover Note	6-009
The Policy	6-015
Chapter 7: The classification and interpretation of terms in a contract of insurance	7-001
Conditions	7-002
Warranties	7-007
Clauses Delimiting the Risk	7-012
Innominate Terms	7-014
Interpretation and Rules of Construction	7-019
Chapter 8: The premium	8-001
General Principles	8-001
The Insurance Brokers' Liability for Premium	8-002
Marine Insurance	8-003
Non-Marine Insurance at Lloyd's	8-006
Non-Marine Insurance Outside Lloyd's	8-012
Reinsurance	8-014
Possible Methods of Circumventing s.53 or Avoiding Its Effect	8-016
Payment of Premium	8-028
Mode of Payment	8-029
Days of Grace	8-030
Time for Payment	8-031
Non-Payment by the Insured	8-032
Payment to the Insurer's Agent	8-037
Return of Premium	8-039
Recovery of the Entire Premium	8-040
Recovery of Part of the Premium	8-044
Chapter 9: The claims process	9-001
Duty of Broker	9-002
Mitigation	9-005
Notification of Loss	9-012
Quantification of Loss	9-022
Dispute Documentation	9-054
Doctrine of Subrogation	9-068

Chapter 10: Accounting	10-001
Procedures	10-001
Funding	10-007
Set Off	10-016
Chapter 11: The broker's professional liability to the insured	11-001
Failure to Obtain Proper Insurance	11-003
Breaches of Duty in the Application Process	11-012
Failure to Exercise Due Care and Attention	11-020
Damages	11-024
Chapter 12: Insurance at Lloyd's of London	12-001
Obtaining Insurance at Lloyd's of London	12-001
Chapter 13: Reinsurance	13-001
Proportional Reinsurance	13-002
Non-Proportional Reinsurance	13-004
The Role of the Reinsurance Broker	13-006
Formation of a Reinsurance Contract	13-008
The Tension of Reinsurance	13-013
Limitation Periods in Reinsurance Contracts	13-061
Chapter 14: Choice of law and jurisdiction	14-001
Chapter 15: Regulation of insurance brokers	15-001
The 1977 Act	15-002
Financial Services and Markets Act 2000	15-018
The Insurance Brokers Registration Council (Code of Conduct) Approval Order 1994	Appendix 1
The General Insurance Standards Council (GISC) Commercial Code	Appendix 2
The General Insurance Standards Council (GISC) General Insurance Code for Private Customers	Appendix 3
Lloyd's Brokers Byelaw	Appendix 4
Lloyd's Code of Practice for Lloyd's Brokers	Appendix 5
<i>Index</i>	569