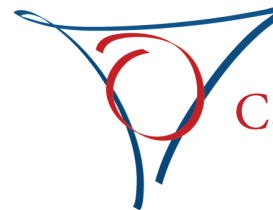


HOUSTON MARINE INSURANCE SEMINAR 2015

*“Recent changes to the Marine Insurance Act 1906
and the Rule on Good Faith”*



**Presented by
Tim Howse**



Campbell Johnston Clark
Marine Law

Origins of Insurance Law

- 18th Century Good Faith
- Lloyd's and "the" Coffee House
- Codification: Marine Insurance Act 1906

Key Features: Marine Insurance Act 1906



Section 17- Utmost good faith

Section 18- Duty of disclosure of every material circumstance

Section 33- Warranties

Fraudulent Claims

Prompt payment

Section 17- Utmost good faith

“if the utmost good faith be not observed by either party, the contract may be avoided by the other party”

Section 18- Duty of disclosure of every material circumstance

“the assured must disclose to the insurer ... every material circumstance ... and the assured is deemed to know every circumstance which, in the ordinary course of business, ought to be known by him. If the assured fails to make such disclosure, the insurer may avoid the contract.”

Section 33- Warranties

"A warranty ... is a condition which must be exactly complied with, whether it be material to the risk or not. If it be not so complied with, then, subject to any express provision in the policy, the insurer is discharged from liability as from the date of the breach of warranty, but without prejudice to any liability incurred by him before that date."

Fraud & Prompt Payment

Derry v Peek (1889) 5 T.L.R 625

Fraud: a statement which was known to be false, or without belief in its truth or reckless /careless as to whether it was true.

Current Issues- A Need for Change?

- Disproportionate protection for the insurer and insured
- Frustrated Courts
- Ineffective assessment of risk
- Lack of insurance legislation for the general public

Core Aims: Insurance Act 2015

- Modernisation
- Improved assessment of risk by insurers
- Harmonisation of law within England and other common law jurisdictions.

Principal Changes

- Duty of fair presentation
- Remedies for material non-disclosure
- Warranties
- Remedies for fraudulent claims
- Late Payment

Key reforms

- Shift in responsibility for non-disclosure on to the insurer
- Commercial flexibility and proportionate response to non-disclosure
- Ability to remedy breach of warranty

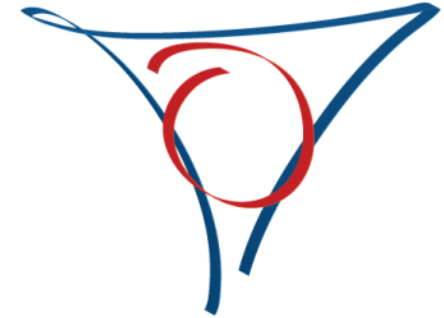
Contracting Out

- Commercial parties may 'contract out' the reforms
- Subject to the 'Transparency requirements'
- Procedures and standard terms should be reviewed to ensure compliance with the legislation.

Practical Considerations

- A more efficient and “open” system
- Review internal procedures now necessary
- Clear policy on arrangements for ‘contracting out’
- Proactive role of the insurer and brokers

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THANK YOU

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