
Editorial

Insurance Risks

The British insurance industry has recently been going through some very hard times, and the cries of anguish from stricken “names” who have learned the hard way about the expensive downside of the risky but hitherto very lucrative underwriting business have been reverberating loudly around the City. Now 987 of those names (some of them very big Names indeed), belonging to a syndicate that is reckoned to have lost at least £260m, are suing a Lloyd’s marine underwriter, Richard Outhwaite, for damages of £150m for alleged negligence. They are also suing the agents who put them onto the ill-fated syndicate.

The action relates, in particular, to 31 “run-off” contracts negotiated in the early 1980s which reinsured other

syndicates in respect of pending asbestosis claims in the USA. Massive compensation awards by the American courts saddled the syndicate with huge losses. Counsel for the plaintiffs have alleged that Mr Outhwaite undertook this reinsurance business – “reckoned to be among the most dangerous and volatile in the world” – with insufficient knowledge of this area of insurance, entirely on his own, and without reference to anyone else at his agency.

The sums of money at stake are enormous (as are the mounting costs – the case has taken two years in pre-trial preparation, and is expected to last until Christmas). So too are the principles involved. We do not of course comment on the merits of the particular proceedings; but this is clearly a major test case – striking out into hitherto untrodden parts of the well-trampled professional negligence jungle – which,

if successful, will surely bring many similar actions in its wake.

Meanwhile, we watch with interest and somewhat mixed sympathies the plight of both parties: of well-heeled “names”, who have lost a huge amount of money playing a game that must have seemed to them to be set to pay out endless jackpots; and of a well-heeled defendant who, having embarked upon a career – hitherto, it seems, a successful one – based upon the brokerage of actuarial risk, now seeing that risk compounded by the added prospect of an action in the civil courts. Whoever wins in the end, the episode seems somewhat to symbolise so many things that came, for better and for worse, to characterise our enterprise culture in the 1980s. Who will insure an underwriter against the risk of such negligence actions? And who in turn will insure those insurers – *quis custodiet* . . . ?