

Brokers – The Marine Peril of Not Knowing the Market

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Two recent cases have highlighted the need for brokers to be familiar with the nature of their client's business and the limits and exclusions of marine insurance products on the market. In both of these cases, the broker was found to have failed to have proper regard for these matters and held liable for the uninsured losses.

Brokers Liable for Inadequate Cover

In the recent marine insurance case of *Lane v Dive Two Pty Ltd*,¹ the broker was found liable for losses suffered by the insured as a result of inadequate cover. The insured owned a vessel which was predominantly used for commercial diving. From time to time however, the insured intended to use the vessel for pleasure. The cover sourced by the broker excluded use of the vessel for pleasure. However, the broker failed to alert the insured to this policy exclusion.

On the morning of the incident the vessel had been used commercially. During the afternoon the insured took friends and family on a leisurely excursion. During the afternoon excursion the vessel collided with another vessel, causing injury to a third party. The insurer refused cover for the third party losses on the basis that, at the time of the incident, the vessel was not being used for commercial purposes. The Court found that the broker failed to advise the insured that the insurance cover procured by him was inadequate to cover all activities undertaken by the insured and held the broker liable for the uninsured liability.

In another recent insurance case, *Kotku Bread Pty Ltd v Vero Insurance Ltd*,² the Court found that the insurer's refusal to cover the insured's property after fire damage was a direct result of the broker's negligence in failing to make proper enquiries with the insured when procuring cover. The broker failed to enquire as to the manner of construction of the insured's shop, where he should have known that the policy procured excluded cover for fire damage when certain materials were present in the construction, which they were in this case. A fire broke out and the insurer declined cover. The insured sued the broker and the Court held the broker liable for the total value of the loss and damage to the insured's property.

¹ [2012] NSWSC 104.

² [2012] QSC 109.

Lessons Learned:

The above cases demonstrate that a broker owes its client a duty to exercise due skill, care and diligence when procuring the most suited policy.

Brokers must ensure that they discharge their duties by procuring the right product for the risk in question. In order to achieve this, brokers need to be knowledgeable of the market in which they operate, informed as to their client's business operations and risks and aware of the limits of the available insurance products.

If a broker is unable to source a policy which properly covers the risks faced by an insured, then the broker must clearly inform the insured of the limits of such policy.

Failure to make enquiries in relation to the client's operations and risks or to advise of any limitations of the policy could result in a broker being held liable for uninsured losses or refusal of cover.

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