

Liability Insurance – Tomorrow and Tomorrow and Tomorrow and Forever



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# Resolving coverage disputes without damaging commercial relationships

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**What does the policyholder want when it has a large and complex insurance claim, and when it has a low value and straightforward insurance claim?**



# Coverage Disputes

Mactavish (the UK's leading expert on insurance governance)

*"45% of large or strategically important commercial claims are disputed by insurers and these disputed claims take three years on average to settle, with the policyholder only typically recovering 60% of the indemnity claimed from the insurer."*

*Insurance Act 2015 Briefing - March 2015*

# Coverage Disputes



# What is better for the policyholder: hostility or constructive engagement?



**IMMATURE PEOPLE**  
**ALWAYS WANT TO WIN**

**ARGUMENTS**

**EVEN @ THE COST OF A RELATIONSHIP.**



**MATURE ONES**

**PREFER LOSING AN ARGUMENT**

**JUST TO UPHOLD**

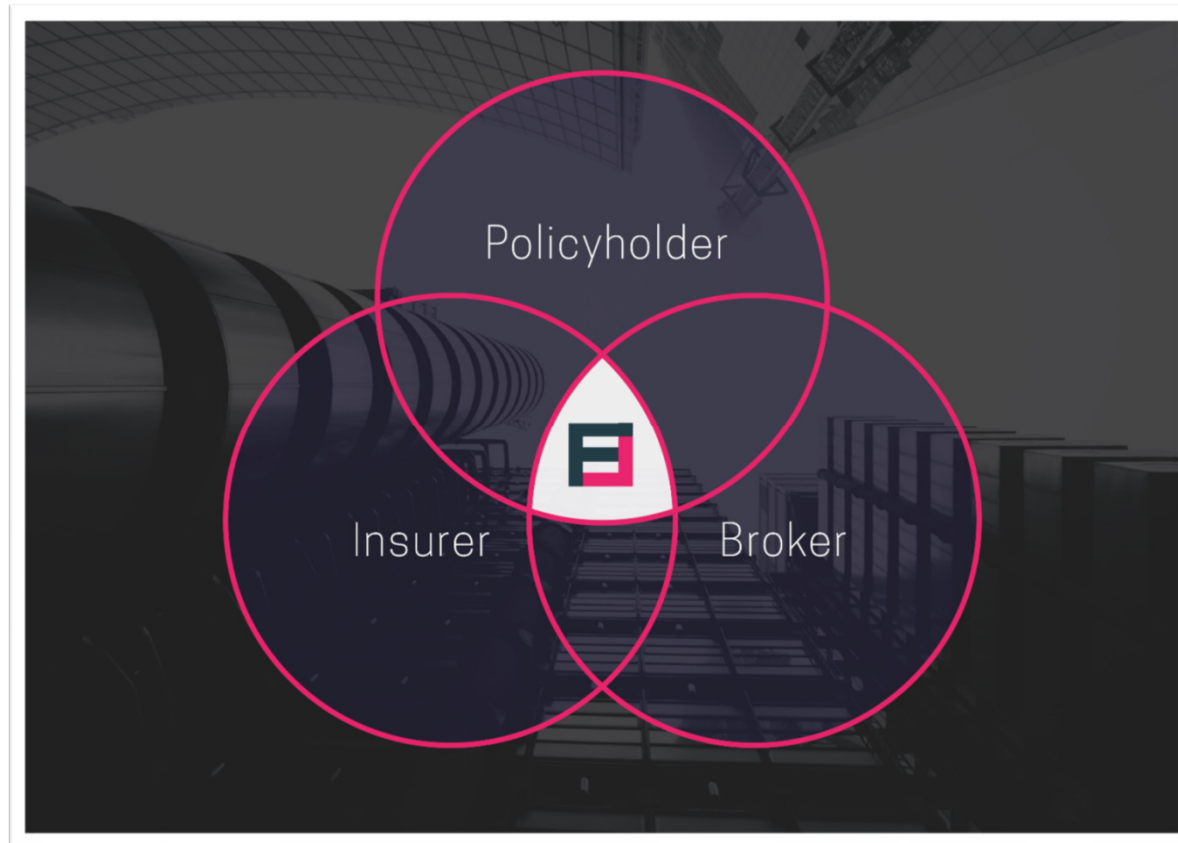
**A GOLDEN RELATIONSHIP.**



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# The three way commercial relationship



**When there's a coverage dispute, is the outcome zero sum, or is "*win-win*" possible?**





# Can the policyholder be strong without being aggressive?

*“My boy Thomas, give him a dirty look and he’ll gouge your eye out.*

*Trip him and he’ll cut off your leg.*

*But if you don’t cross him he’s a very gentleman. And he’ll stand anyone a drink”.*

Walter Cromwell, from *Wolf Hall* by Hilary Mantel.

# Does the approach depend on the type of coverage issue?

## Acceptable, Unacceptable, or Depends?

- Underwriting at Claims Stage?
- Breach of Policy Terms?
- Scope of Cover Disagreements?

# Is the broker more useful as the policyholder's opponent, or its ally?

Where's there's an (unpaid) claim, there's blame....

- The policyholder's choice:
  - attack both the insurer and the broker?; or
  - keep the broker on-side?

# The roles of the lawyer and the broker: a tale of compulsion and desire



# Dispute resolution methods

## Compulsion

- Litigation (Part 7 / Part 8)
- Arbitration (Ad Hoc / Institutional / Fast Track)

## Desire

- Negotiation
- Mediation

## Hybrid

- Expert determination

# Coverage Disputes

## *Settlement?*

### Is the dispute amenable to settlement?

- Can the policyholder *afford* to settle?
- Can it afford *not* to settle, and to go to trial?
- Point of principle involved?
- Fraud?

# Know Your Enemy

Just who  
is/are  
the Insurer(s)  
on the  
particular  
claim?

- One insurer? *What is its reputation in the claims sphere?*
- Two or more insurers? *Differing positions?*
- A large market? *Economies of scale to pay a claim?*
- An underwriting agency? *Broker-focussed?*
- A run-off company? *Not broker-focussed!*

# What's the best way to resolve an avoidance for material non-disclosure?

## Compulsion

- Litigation (Part 7 / Part 8)
- Arbitration (Ad Hoc / Institutional / Fast Track)

## Desire

- Negotiation
- Mediation

## Hybrid

- Expert determination



# What's the best way to resolve a declinature for breach of condition precedent?

## Compulsion

- Litigation (Part 7 / Part 8)
- Arbitration (Ad Hoc / Institutional / Fast Track)

## Desire

- Negotiation
- Mediation

## Hybrid

- Expert determination

# What's the best way to resolve a disagreement about whether contract works are damaged or merely defective?

## Compulsion

- Litigation (Part 7 / Part 8)
- Arbitration (Ad Hoc / Institutional / Fast Track)

## Desire

- Negotiation
- Mediation

## Hybrid

- Expert determination

# Questions?



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