

See bulletin Y3406 – 18 October 2004

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FROM: Iain Saville
LOCATION: 86/603
EXTENSION: 5932
DATE: 7 June 2004
REFERENCE: Y3327
SUBJECT: LMP SLIP
SUBJECT AREA: Choice of law and jurisdiction
ACTION POINTS: **To note guidance on compliance with LMP slip standards**

From 2 January 2004, the Franchise Board has required all slips used in the Lloyd's market, subject to certain limited exceptions, to be LMP slips completed in accordance with London Market Principles ("LMP") slip standards (see Market Bulletin Y3251). These standards are intended to promote clarity and reduce the scope for disputes and litigation.

Regular monitoring of compliance with this requirement has highlighted some misunderstandings of what is required to be included under the heading Choice of Law and Jurisdiction. LMP slip standards require that the parties must specify –

1. in which territory they intend any dispute relating to the contract will be heard; and
2. which territory's law they intend will be used to determine the dispute.

Inserting the following under the heading Choice of Law and Jurisdiction does not comply with the mandated LMP slip standards:

- i "UK" – Inserting the word "UK" is ambiguous as it could refer to either the laws or the courts of either England and Wales or Scotland.

If, for example, the parties intend any dispute relating to the contract to be heard in England under English law they may wish to insert "This insurance shall be governed by and construed in accordance with the law of England and Wales and each party agrees to submit to the exclusive jurisdiction of the Courts of England and Wales";

- ii. “USA” – Inserting the word “USA” is ambiguous as a choice of law as there is no general Federal common law; the law of a particular State must be chosen, e.g., New York or Delaware. For the same reason, if a particular forum to hear the dispute is to be agreed, “USA” would also be ambiguous. A particular State’s courts might be chosen as the forum to hear disputes; generally but not necessarily this is the same State as the choice of law. However, for a “regulated” surplus lines or reinsurance piece of business, the jurisdiction (or forum) clause is required to be, in substance, in the form of NMA 1998 (Service of Suit Clause (USA)), though even in this case the choice of law (but not forum) is a matter left to the parties’ choice. NMA 1998 commits Underwriters to responding to service of suit in any competent American court; however, it carefully preserves the Underwriters’ right to seek to transfer from the court chosen by the claimant or to remove the action from State court to Federal court (or indeed to initiate an action in any court). If a particular jurisdiction is being agreed to and NMA 1998 clause is not used, careful consideration should be given in drafting an alternative clause to ensure preservation of the Underwriters’ right to seek transfer or removal of the action to a more appropriate court; this is a right which all defendants, domestic or foreign, would have in the absence of a jurisdiction agreement which waives or might be construed as waiving such rights;
- iii. “Worldwide” – The heading Choice of Law and Jurisdiction must not be confused with the territorial scope of limits of the cover provided under the insurance contract. It is therefore not acceptable to insert the word “worldwide” under the heading Choice of Law and Jurisdiction. Territorial scope and limits must be entered under Conditions in the Risk Details section of the slip;
- iv. “As original” – There is a risk that inserting the words “as original” will not be held to be sufficiently specific to incorporate into a reinsurance contract the Choice of Law and Jurisdiction clause in the underlying insurance contract. If that is what the parties intend, then the parties must specify the choice of law and jurisdiction used in the underlying insurance contracts;
- v. “Arbitration clauses” – Arbitration clauses must be entered into either the Risk Details or conditions sections of the slip and must be consistent with the Choice of Law and Jurisdiction section.

Practitioners should additionally refer to the LMP Slip documentation which is available at www.lmp-reforms.com or from the LMP Programme Office.

Any questions on the content of this bulletin should be addressed to the LMP Programme Office on 020 7327 5220 or Imp@lmpoffice.com.